

**The**  
**Legislation of the Prussian State**

since the introduction of

**The Constitutional Form of Government**

Regulated According to

**The Latest Resolutions of the Chambers**

and

Edited and Compiled

**for the use of**

Judicial and Administrative Officials as well as for the  
Citizen and Businessman.

By

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Doctor of both Rights.

**First part.**

**Legislation from 1848 until the end of the chamber season in  
February 1850.**

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## Preface.

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Since the year 1848., in which Prussia was constitutionalized and the citizens of the state were given much greater participation in the affairs of the state, the need for every inhabitant of the state to know the laws and to have them at hand at all times has become more urgent than before. As a juror, as a member of the municipal, district or provincial administration, of the trade council, as an elector, as a member of parliament, the citizen has to fulfill heavy and important duties. This need is now all the more difficult to satisfy, as Prussian legislation has developed such enormous activity in recent years in order to rebuild the state structure that almost every day brings new important laws, one of which almost always repeals or supplements another as events change. This has rendered most of the existing compilations and compilations of laws useless, and even the handbooks published in 1848 and 1849 are no longer sufficient. In particular, now that the many and significant changes in legislation that were passed by the two chambers up to February 1850 have come into force, there is a complete lack of information on the legislation currently in force. The only reference here is the collection of laws itself, which, however, is far too extensive and expensive, contains a lot of unimportant material, and in particular does not allow a distinction to be made between the laws that are still valid and those that have already been repealed.

The same need that exists at this moment will arise later at the end of each chamber season. The author has therefore decided to publish a compilation of the laws passed at the end of each chamber season, and he hereby hands over to the public the first delivery, containing the legislation up to the end of the chambers in February 1850. The octroyed (granted) laws passed before the convening of these chambers, insofar as they have not yet been revised by the chambers and are therefore still valid, are also included in full. The other laws enacted with the cooperation of the former united Diet and the National Assembly, but which have since been repealed or have become meaningless, are only briefly mentioned in terms of their content.

The present work does not claim to be of scientific value; it is only intended to meet a practical need and can therefore only be considered from a practical point of view.

**Dr. Stieber.**

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First part.

Legislation from 1848 until the end of the summer season in February 1850.

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## **First part.**

**Legislation from 1848 until the end of the chamber season in  
February 1850.**

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# Introduction.

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## I. Legislation from the year 1848.

The new phase in the history of Prussia, which began with the March events, begins with the

Law on the Press of March 17. 1848.,

by which censorship and newspaper concessions were abolished and freedom of the press, albeit limited by cautions, was introduced. This law was the last act of Prussian legislation in its previous absolute position.

The United Parliament then convened and the following laws were passed in conjunction with it:

1) Decree on some foundations of the Prussian Constitution, dated April 6, 1848.

2) Electoral law for the assembly to be called to agree on the Prussian state constitution, dated April 8, 1848., together with regulations.

3) Law on the establishment of public loan funds and the issuance of loan fund certificates, dated April 15, 1848.

4) Decree of April 25, 1848., concerning the interest-bearing acceptance of voluntary contributions to meet the needs of the state, and

5) Decree of June 14, 1848., concerning the acceptance of bonds of the voluntary state loan as pupil and deposit security.

The National Assembly convened in May 1848. In the meantime, before its participation in the legislative process began, the following laws were passed independently by the State Ministry:



1) The decree on the election of Prussian deputies to the German National Assembly, dated April 11, 1848., together with regulations (in accordance with the resolution passed by the German Federal Assembly in the session of April 7, 1848).

2) Ordinance on the powers of the militia, dated April 19, 1848.

3) Decree of May 6, 1848., concerning the abolition of corporal punishment.

4) Decree to the Ministry of War concerning the salutation of soldiers, dated June 26, 1848.

5) Decree concerning the cessation of the secret conduit lists in the army, dated July 29, 1848.

6) Decree concerning the abolition of the secret conduit lists in the civil administration, dated July 31, 1848.

With the cooperation of the National Assembly, the following enact laws.

1) Law of June 23, 1848., concerning the decision of the assembly called to agree on the Prussian constitution.

2) Law of July 6, 1848., concerning the loss of membership in the assembly appointed to agree the Prussian state constitution in connection with employment or promotion in the civil service.

3) Law of August 11, 1848., concerning the abolition of the first place of jurisdiction in criminal and fiscal matters of investigation and in injuria proceedings.

4) Law for the Protection of Personal Liberty, dated September 24, 1848 (Habeas Corpus Act).

5) Law on the establishment of the militia, dated October 17, 1848.

6) Ordinance concerning the implementation of this law, also dated October 17, 1848.

7) Law concerning the abolition of the right to hunt on foreign land in the exercise of hunting, dated October 31, 1848.

This law was the last act of the legislative activity of the National Assembly. In addition, as a result of the resolutions passed by the Regent in the German National Assembly in Frankfurt on October 9 and 10, 1848., the Patent on the Publication of the Imperial Law for the Protection of the Constituent Imperial Assembly and the Officials of the Provisional Central Power, dated October 17, 1848., was published.

On December 5, 1848., the decree concerning the dissolution of the National Assembly and the constitutional document of December 5, 1848., was published. At the same time, the new electoral law for the first and second chambers of December 6, 1848., together with the regulations pertaining thereto, were made public. Now follow a series of laws which were enacted on the basis of Art. 105. of the Constitution of December 5, 1848. Only two of these fall within the year 1848.

1) Ordinance concerning the abolition of the newspaper stamp, dated December 8, 1848.

2) Ordinance concerning the repeal of the Circular Ordinance of December 25, 1799, and the amendment of the Injury Penalties of December 18, 1843.

Of all these laws of 1848., only one, namely that of May 6, 1848., concerning the abolition of the punishment of corporal punishment, is still of practical importance and therefore only this one law is given here in full. All the others have since been partly repealed and partly rendered meaningless.

The law on the press of March 17 was already substantially amended by the ordinance of April 6, and it was completely repealed by the constitution of January 31, 1850, and the new press law of June 30, 1849. Likewise, the ordinance of April 6, 1848., on some of the foundations of the constitution was repealed by the later constitutions of December 5, 1848., and January 13, 1850. The laws concerning the National Assembly have been abolished with its dissolution. The same is the case with the Civil Defence Act. The decrees concerning the salutation of soldiers, the abolition of the secret conduit lists and the abolition of the newspaper stamp have already served their purpose. The law of 11 August 1848 on the abolition of the original jurisdiction in criminal matters was rendered superfluous by the law of 2 January 1849 on the new organization. The Habeas Corpus Act of September

24, 1848. and the Hunting Act of October 31, 1848. have been repealed by the respective new laws of February 12, 1850. and March 7, 1850. The constitutional document of December 5, 1848. has been repealed by the constitution of January 31, 1850. The ordinance of December 18, concerning the amendment of the penalties for infractions, has been incorporated into the new ordinance of March 11, 1850.

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## **II. The octroyed legislation of the year 1849.**

The constitution of December 5th marks the beginning of a series of octroyed laws, which, since there was no representation of the people at the moment after the dissolution of the National Assembly, but since the enactment of several laws was considered an urgent need, were enacted independently by the Ministry of State on the basis of Art. 105. of the constitution of December 5th and which were intended to be submitted to the later chambers for revision. The first chambers, which convened on February 6, 1849, as a result of the constitutional work of December 5, 1848., were dissolved again on April 28, 1849, and did not exert a considerable influence on legislation:

1) Ordinance on the Abolition of Private Jurisdiction and the Place of Jurisdiction and on the Other Organization of the Courts, dated 2 January 1849.

2) Ordinance on the introduction of oral and public court proceedings with jurors in investigative matters, dated January 3, 1849.

3) Ordinance of January 4, 1849, on the fines to be imposed in lieu of confiscation of property against deserters and resigned conscripts (amended by the Act of March 11, 1850).

4) The Introductory Order to the General Exchange Regulations for Germany, dated January 6, 1849 (supplemented by the Act of February 15, 1850).

5) Ordinance on the abolition of the obligation to provide free assistance in clearing snow from the roads, dated January 6, 1849.

6) Ordinance concerning the establishment of trade offices and various amendments to the General Trade Regulations, dated February 8, 1849.

7) Ordinance on the Establishment of Trade Courts, dated February 9, 1849.

8) Decree on the state of siege, dated May 10, 1849.

9) Ordinance concerning the punishment of incitement to disobedience by persons of military rank. Disobedience, dated May 23, 1849.

10) Ordinance on the punishment of offenses against telegraph operators, dated June 15, 1849.

11) Ordinance on the Prevention of Abuses Endangering Legal Freedom and Order, the Right of Assembly and Association, of June 29, 1849 (Amended by the Act of March 11, 1850).

12) Ordinance concerning the reproduction and distribution of writings and various criminal acts committed by word, writing, printing, signs, pictorial or other representation, dated June 30, 1849.

13) Ordinance concerning the misconduct of judges and their involuntary transfer to another position or retirement, dated July 10, 1849.

14) Ordinance concerning the misconduct of non-judicial officials and their transfer to another position or retirement, dated June 11, 1849.

15) Ordinance concerning some amendments to the Depository Ordinance of September 15, 1783, dated July 18, 1849.

Of these laws, those listed under Nos. 3, 4, 5, 6, 7, 9, 10, 15 have already been revised and respectively approved by the chambers assembled from August 7, 1849, to February 26, 1850. The laws listed under Nos. 1, 2, 8, 12, 13, 14 have not yet been discussed in the chambers and will not be debated until the next season. Until then, they will remain in force.

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### **III. The legislation of the Chambers assembled on August 7, 1849. and closed on February 26, 1850.**

These chambers have developed a very significant activity with regard to legislation, in which, of course, a certain volatility cannot be denied in individual matters, especially during the time they have been together. Including the adoption of the state budget, these chambers have debated a total of 50 laws, two of which were initiated by the chamber, namely: 1) the law on facilitating the sale of small items, 2) the law on the obligation of the municipality to record the damage caused by public incidents.

The list of the 50 laws deliberated by these chambers is as follows:

1) Declaration on the Wine Act of October 9, 1848., concerning the suspension of negotiations on the regulation of landlord and peasant relations and on the redemption of services, taxes in kind and monetary levies, as well as the lawsuits pending on these matters, in relation to the official suspension of lawsuits on the obligation to pay property change levies.

2) Ordinance on the abolition of the obligation to provide free assistance in clearing snow from roads.

3) Ordinance concerning the fourteen-day extension of the payment period for bills of exchange and other commercial papers payable in Elberfeld and Barmen from May 10 to 25, 1849.

4) Law concerning the suspension of the establishment and reorganization of civil defence forces.

5) Decree on the peasant succession in the province of Westphalia.

6) Law concerning the determination of the normal prices and normal market rates to be observed when redeeming real charges.

7) Law concerning the punishment of incitement to disobedience by persons of military rank.

8) Law, due to repeal of class tax exemptions.

9) Law concerning the construction of the Eastern Railway, the Westphalian Railway and the Saarbrücken Railway, as well as the procurement of the necessary funds.

10) Law concerning the reduction of letter postage rates.

11) Law concerning the abolition of the compulsory internment of the intelligentsia in favour of the military orphanage in Potsdam and the official intelligentsia gazettes.

12) Ordinance on the conduct of the election of deputies to the Second Chamber.

13) Ordinance concerning the punishment of offenses against telegraph institutions.

14) Regulation concerning the amendment of the customs tariff with regard to the import duty on unpurified soda ash.

15) Ordinance on the establishment of commercial courts.

16) Constitutional document for the Prussian state dated January 31, 1850.

17) Ordinance of February 9, 1849, concerning the establishment of trade councils and various amendments to the General Trade Regulations.

18) Law concerning the amendment of §. 44. of the West Prussian Provincial Law.

19) Ordinance concerning the interim regulation of the landlord-farmer relations in

20) Law for the protection of personal freedom.

21) Law concerning the position under police supervision.

22) Law on the introduction of the General Exchange Regulations for Germany.

23) Law concerning the administration of the state treasure trove.

24) Act concerning the abolition of property tax exemptions.

25) Draft law concerning the fine to be imposed on deserters and resigned military personnel instead of confiscation of property.

26) Ordinance concerning the introduction of public and oral court proceedings in the districts of the Court of Appeal at Greifswald and the Senate of Justice at Ehrenbreitstein.

27) Draft law concerning the redemption of real burdens and the regulation of landlord and peasant relations for the entire extent of the monarchy, with the exception of the parts of the country on the left bank of the Rhine.

28) Draft law concerning the establishment of pension banks for the whole of the monarchy, excluding the parts of the country on the left bank of the Rhine.

29) Draft law to amend certain provisions of the law of January 3, 1845, concerning the division of land and the establishment of new settlements.

30) Draft law concerning the amendment and modification of the Commonwealth Division Order of June 7, 1821. and some other laws enacted concerning Gemeinheitstheilungen.

31) Draft law concerning the obligation of the municipalities to compensate for damage caused by public run-ins.

32) Draft law concerning the granting of an interest guarantee by the state for the shares of the Aachen-Düsseldorf and Ruhrort-Crefeld-district-Gladbacher Railway Company.

33) Draft law concerning the unification of the principalities of Hohenzollern-Hechingen and Hohenzollern-Sigmaringen with the Prussian territory.

34) Draft law concerning the granting of aid from the state treasury to the Melioration Society of Bocker Haide.

35) Draft law concerning the facilitated sale of small plots of land throughout the Monarchy, with the exclusion of the parts of land on the left bank of the Rhine.

36) Draft law on the prevention of abuse of the right of assembly and association that endangers legal freedom and order.

37) Draft law concerning the new division of the districts of the mortgage offices in the area of the Court of Appeal in Cologne,

38) Draft law concerning the support of needy families of reserve and rural military personnel called up for service.

39) Draft law concerning the real taxes levied on mills etc.

40) Draft law concerning the non-interest-bearing national debt.

41) Draft law concerning the extraordinary financial requirements of the military administration for the year 1850.

42) Draft law concerning the municipal order for the Prussian state.

43) Draft law on the local and district police.

44) Draft law concerning the county, district and provincial order.

45) Draft law concerning the Hunting Police Act.

46) Draft law concerning customs duties and taxes on foreign sugar and syrup and domestic beet sugar.

47) Draft law, concerning the adjustment of the purchase money for the property transferred to the Ministry of Spiritual sc. Affairs.

48) Draft law concerning the adoption of the state budget for 1849.

49) Draft law concerning the adoption of the state budget for 1850.

50) Provisional decree of December 18, 1848., concerning the repeal of the circular decree of February 26, 1799, and the amendment of the penalties for infractions.

All of these laws have been approved by the government and those of particular practical importance are listed below. For the few missing ones,



which are of lesser importance and only represent a special interest, we must refer to the collection of laws.

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## **The laws themselves.**

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## **1. Decree concerning the abolition of corporal punishment: of May 6th 1848.**

Corporal punishment occurs very frequently in the law of the land, especially in the form of the so-called welcome and farewell. By the Circular Decree of February 26, 1799, corporal punishment was introduced to an even greater degree, especially for theft. The long-held view that this punishment is unworthy of an educated people and that it does more harm than good in moral terms was finally brought to bear in the decree of May 6, 1848. In penitentiaries and prisons, corporal punishment still exists, even for females, but as a disciplinary means of punishment, just as it can also be used as a deterrent against criminals who have not reached the age of majority.

In consequence of the political rights conferred equally on all my subjects by the new laws, I hereby decree, at the request of the Ministry of State, that henceforth the punishment of corporal punishment shall no longer be imposed by civil and military courts, but shall be replaced by proportional imprisonment. In those cases in which corporal punishment has already been recognized but not yet enforced, it shall be converted into a proportionate custodial sentence by the competent courts.

The present decree is to be brought to general knowledge through the collection of laws.

Potsdam, May 6, 1848., Friedrich Wilhelm.  
Camphausen, Bornemann. Count v. Canitz.

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## **2. Ordinance on the Abolition of Private Jurisdiction and the Excluded Jurisdiction, and on the Other Organization of the Courts. From January 2, 1849.**

This decree, as well as the immediately following one of January 3, 1849, constitutes one of the most important advances that the administration of justice has ever made in Prussia, and it is to be regarded as the most important real achievement of the state upheaval of 1848. The abolition of the *eximirten* jurisdiction, the former complicated system of instances of the various courts,

the abolition of the patrimonial courts, the introduction of the public and oral investigation procedure, and the jury courts, this is the important content of these two ordinances, by which the Prussian judiciary has been completely reorganized. For years, efforts had been made in vain to abolish the patrimonial courts and the eximiated jurisdiction, as both institutions lacked any reasonable justification and had an inhibiting effect in many respects, until finally the revolution helped to overcome the existing difficulties, which were caused in particular by the larger landholdings. Oral and conditionally public proceedings have existed for civil proceedings since 1833, but not for criminal proceedings. Only for Berlin was an attempt made in the law of July 17, 1846, but without a jury, which was extremely successful and produced such favourable results that one would prefer the procedure created by the law of July 17, 1846, to the jury courts. These ordinances of January 2 and 3, 1849, are particularly important for the procedure in civil proceedings in that in all cases over 50 thlr. real larger colleges of judges are recognized, whereas previously the small town and county courts and patrimonial courts very often consisted of only one judge. However, the inconvenience is now apparent that the seats of the colleges of judges are often very far away from the individual residences of the people who sit on the courts.

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree in execution of Articles 40. 85. and 88. and on the basis of Article 105. of the Constitutional Charter for the extent of Our Monarchy with the exclusion of the district of the Court of Appeal at Cologne, at the request of Our Ministry of State, the following:

## I. Abolition of private jurisdiction.

§. 1. The sovereign, municipal and patrimonial jurisdiction of any kind in civil and criminal matters shall be abolished. Henceforth, jurisdiction shall be exercised everywhere in our name only by judicial authorities appointed by the State, the establishment and competence of which shall be determined by the following provisions.

Ecclesiastical jurisdiction is subject to the same suspension in all secular matters, namely also in proceedings concerning the civil separation, invalidity or nullity of a marriage. All such legal matters belong before the ordinary courts.

§. 2. The abolition of private jurisdiction shall be effected without compensation to the previous holders, but from the date of abolition not only the benefits and other rights flowing from the jurisdiction, but also all

burdens thereof, including the obligation to transfer the costs of crime, shall pass to the state.

As far as the overdue taxes on the day of the transfer of jurisdiction are concerned, the taxes already liquidated and collected by then shall remain with the former lords of the court, while the taxes not yet collected shall be liquidated and collected for the account of the state treasury. Criminal costs are to be transferred by the lords of the court to the extent that the demand for payment of the same has already been issued by the day of the transfer of jurisdiction, whereas the costs to be transferred by the lords of the court that are only demanded later shall be borne by the state treasury.

§. 3. When assuming jurisdiction, the existing business equipment of the previous judicial authorities shall be handed over to the state authorities insofar as it is required for the new courts. The state shall also be entitled to continue to use existing special court buildings and prisons if they are to be used for the administration of justice, but in this case shall assume the obligation to maintain them and, if they are the property of private persons, shall return the premises to them as soon as their needs are otherwise provided for, but until then shall grant reasonable compensation for their use.

§. 4. The judges employed for life by the abolished private courts, whose employment or contract documents have been confirmed by the superior authority unconditionally and not subject to the reservation that, in the event of a merger of the court concerned with a royal or district court, or in the event of the transfer of jurisdiction to the state, they must accept their abolition, shall be re-employed in the service of the state with the income that can be granted to them in the newly established judicial authorities, taking into account their seniority and the budget conditions in the ranks of the other lower court judges.

All other private judges, including those municipal officials in New Western Pomerania who administer the office of judge only in connection with other functions as municipal officials, are not obliged to be taken on by the state, but their accommodation should be considered as far as possible in accordance with their qualifications and as far as suitable opportunities arise. If they possess a qualification certificate for appointment to the higher courts, they shall in any case be appointed to the royal courts with the income that can be granted to them according to their seniority in the ranks of the higher court assessors and according to the budget and personnel conditions.

§. 5. Subalterns and sub-officials of the private courts shall be taken on with an income to be determined according to the circumstances of the new courts if they are employed for life and without reservation with the approval of the authority concerned. Otherwise, provided that they can prove their eligibility for employment, they shall be listed as examiners for suitable offices, and it shall also be left to the subaltern officials to take up positions as civil supernumeraries in the courts if they are found suitable for this by the courts.

§. 6. When taking over the judicial officers of the courts of the estates, the provisions of the Instruction of May 30, 1825 (Collection of Laws page 96. and following) shall be taken into account, unless they have been modified by special contracts concluded by the State with the estates, in which case these contracts shall be decisive.

§. 7. Former private court officials employed by the Royal Courts of Justice shall be credited with their previous period of service in the event of future retirement in accordance with the provisions of the Pension Regulations of April 30, 1825.

All private judiciary officials re-employed on a fixed salary, if they were not previously entitled to a pension, are subject to your one-twelfth pension deduction when they join the direct civil service.

§. 8. The relationship of the cities in those provinces in which royal courts have previously replaced municipal courts shall not change until it is otherwise regulated by the present ordinance.

## II. Cancellation of the ex officio jurisdiction.

§. 9. The exclusive and privileged place of jurisdiction for persons, properties and rights, as well as the privileged place of jurisdiction of the treasury, insofar as it still exists, is generally abolished. Every person shall henceforth be subject to the ordinary court which is initially and directly appointed for the place or district, and every property shall be subject to the ordinary court of the district in which it is situated.

Corporations and other moral persons must be prosecuted before the ordinary court in whose district the board of directors of the same has its seat. Exceptions to this rule shall be determined by law. The place of jurisdiction of the railroad companies for claims for compensation, as

provided for by the Cabinet Order of March 1, 1847. (Collection of Laws p. 112), shall be replaced by the place of jurisdiction in rem at the ordinary court in whose district the expropriated or damaged property is located, unless the plaintiff prefers to sue in the personal jurisdiction of the railroad company at Hagen.

The provisions of the ordinance of June 16, 1834. on the establishment of the judicial authorities in the Grand Duchy of Poznan (Collection of Laws p. 75 ff.) which deviate from the above provisions shall cease to be in force.

§. 10. The exceptions made in §§. 1. & 2. of the law of August 11, 1848. concerning the abolition of the original place of jurisdiction in investigative and injury matters (Collection of Laws p. 201.), with regard to the place of jurisdiction of judges, judicial police officers and patrimonial court lords, are hereby repealed.

The military jurisdiction in criminal matters, as well as the jurisdiction of students, shall be otherwise determined by special laws. Until then, the existing regulations shall remain in force.

§. 11. With regard to legal disputes between members of the Royal Family, as well as the non-contentious legal matters of persons belonging to the Royal Family, namely with regard to the execution of wills, estate settlements, family closures, matrimonial property, guardianship and similar matters, nothing is changed by the present ordinance; rather, in this respect, the House Constitution shall remain in force.

§. 12. The proceedings to be dealt with in accordance with the decree of June 28, 1844 (Law Collections p. 184. ff.), which have as their object the divorce, invalidity or nullity of a marriage, shall again be transferred to the ordinary personal courts. Sections 1, 2 and 56 of that ordinance shall be amended accordingly and, with the repeal of section 3 thereof, it shall be determined that three judges shall suffice for hearings at first instance and five judges at second instance. The business of the public prosecutor in these proceedings shall be performed by the public prosecutor appointed to the competent court for criminal matters.

§. 13. By amendment of the Edict of February 21, 1816 (Law Gazette, p. 104) and the Cabinet Order of July 6 and October 12, 1837 (Law Gazette, p. 134 and 147), the special jurisdiction for mining disputes is likewise abolished. However, in the legal disputes referred to therein, which from now on also belong before the ordinary courts of first instance, the courts shall, if

they either consider this necessary themselves or if one of the parties so requests, call two of the mining experts to be designated by the chief mining office of the district to attend the oral hearings with full voting rights.

The latter provision shall also apply if such mining cases reach the second and third instance, but experts who have already participated in the decision in the same case in one of the previous instances may not be called upon in the higher instance.

§. 14. The confirmation of an adoption in lieu of a child (§. 667. Tit. 2. Th. 11. General Land Law) henceforth belongs before the ordinary personal court.

Also, the approval of the superior authority is no longer required for the sale of immovable property of the wards free of subhastations\* (§. 586. Tit. 18. Th. II. General Land Law, Cabinet Order of November 10, 1830, Law Collections p. 144.), rather the decision of the competent collegial court is sufficient.

\* Note: Subhastation (archaic) - A public sale or auction.

§. 15. As long as special provincial or statutory rights still exist in individual provinces, which have not been applied to persons and property exempted from ordinary jurisdiction under the previous provisions, their application to such persons and property shall continue to be excluded.

§. 16. Disputes concerning the competence of the judicial authorities of first instance with regard to the matters transferred to their jurisdiction (Sections 9 to 14) shall be decided by the higher courts, which shall also have the power to transfer the keeping of the mortgage register for a related complex of properties located in the districts of different courts and, if necessary, the management of sequestrations and sub-sequestrations thereof to one of these courts. If such a provision is required for properties in the districts of different higher courts, it shall be made by the Minister of Justice.

§. 17. A hearing and decision of the legal dispute in the first instance before the higher court in the cases of §§. 131. to 147. Tit. 2. Th. I. of the General Court Rules shall no longer take place, but may only be transferred to another court of first instance.



### III. Organization of the judicial authorities.

§. 18. The alternative organization of the judicial authorities, which is necessitated by the abolition of private jurisdiction and of the first place of jurisdiction ordered above, as well as by the provisions of the ordinance on the introduction of oral and public proceedings with juries in cases of investigation, shall, as far as possible, be based on the existing judicial institutions until such time as the obstacles to a thorough and uniform reorganization are removed by legislation throughout the Monarchy.

The administration of justice is thus exercised in the first instance by district and municipal courts established on a collegial basis in conjunction with individual judges, in the second instance by courts of appeal, and in the last instance by the Higher Tribunal in Berlin.

In addition, in places where a need arises, special commercial and industrial courts shall be established in which the administration of justice is administered or co-administered by competent judges freely elected by the members of the profession.\*)

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\*) Trade courts of this type have already been established in several places by royal decree. See also the ordinance of February 9, 1849 on the establishment of trade courts.

#### 1. Courts of first instance.

§. 19. The jurisdictional district of a district court shall comprise approximately 40,000 to 70,000 (on average 50,000) inhabitants and shall be as close as possible to the district division. For each rural district, if it contains about 40,000 inhabitants, otherwise for two rural districts, or for one district with the addition of a part of the neighbouring district, a district court consisting of a director and the required number of members (councillors and assessors) shall be established independently or by combining the existing court authorities, consisting of at least six, in exceptional cases five judges, the seat of which, unless there are important reasons to the contrary, should preferably be the district town, and in the case of the combination of two districts, preferably the district town located closest to the centre of the judicial district.

In towns of 50,000 or more inhabitants, a special district court shall be established in addition to the town courts to be retained, if it appears inappropriate, in view of the volume of business, to extend their districts to the rest of the district concerned.

The first director of a municipal court in the above-mentioned larger cities shall be entitled to the office of "president".

§. 20. Each district court and each municipal court shall be divided into two main divisions, the first of which shall be assigned contentious jurisdiction in civil and criminal matters, including credit and subhastation matters, and the second of which shall be assigned all other matters of judicial administration which are not reserved to the courts of appeal (Section 25). They are distinguished in their rulings and decisions by the addition: "First Division" and "Second Division". The director may be the chairman of both divisions.

In the first division, permanent commissioners shall be appointed by the. The Director shall appoint permanent commissioners for small claims, injury and investigation cases to be heard and decided by individual judges. Small claims cases are, without distinction, all those cases whose monetary value does not exceed 50 Rthlr. With regard to injury cases, it shall be left to the discretion of the district or municipal court to refer the hearings and decisions to the collegium at the request of a party.

If the first division lacks the required number of judges for the trial of crimes, the Director shall appoint members of the second division as additional judges.

Business regulations shall determine in more detail the distribution of business among the members according to geographical districts or objects of business, and shall determine which matters are subject to collegial deliberation and decision-making in addition to the decisions and resolutions expressly reserved to the cognizant judge in the laws.

The establishment of the City, Guardianship and Criminal Court in Berlin, as well as the competence of the Aldermen's Courts and Land Clerks' Offices in the district of the Senate of Justice in Ehrenbreitstein, shall be regulated by special instructions.

§. 21. If, in the district of a district court, there are other places besides the town in which it is situated which have hitherto been the seat of larger

judicial authorities, or if a considerable need arises in places at a distance of about three miles or more from the seat of the court, then single judges (district judges or court commissioners) may be appointed in them, whose districts shall extend to the town and its environs. They shall be members of the district court concerned, shall be on its budget and under the supervision of the director thereof, who shall convene them as supplementary judges if necessary.

However, court colleges existing in such places may also be retained as deputations and special divisions of the district courts for the civil and criminal cases of a certain district to be dealt with collegially. In this case, their competence shall be determined in more detail by the rules of procedure (§. 20.).

§. 22. Each district court and each municipal court shall have unlimited jurisdiction in all civil and criminal matters. However, for the holding of jury trials for serious crimes in accordance with the special ordinance relating to this subject, the appropriate judicial authorities and the districts to be assigned to them shall be specially designated by the Minister of Justice on the proposal of the Court of Appeal.

Only the following matters fall within the competence of the individual judges:

1) Small claims and injury cases, namely the latter with the restriction noted in §. 20. of this Act,

2) in other civil procedural matters in their district: those matters which do not require oral hearings and adversarial decisions before the College, such as: The receipt and admission of complaints and their replies, the drafting of writs of attachment and contumacious orders and their enforcement, the provisional creation of attachments, etc., in accordance with the more detailed provisions of the rules of procedure (§. 20.),

3) forestry disputes.

4) the police and embarrassing offenses to be decided by individual judges according to the law,

5) the issuing of all provisional orders incumbent on the civil courts in criminal matters in accordance with §. 20. of the Criminal Code, as well as

the function of an examining magistrate to be appointed at the request of the public prosecutor,

6) the recording of applications of any kind which residents of the district wish to submit for the record in their legal matters, as well as the forwarding of such applications to the competent judicial authority.

7) the recording of acts of voluntary jurisdiction, including testamentary dispositions,

8) all probate, curatorship, guardianship and mortgage cases in their district which the district court does not decide to refer to it in accordance with the rules of procedure (§. 20.) as being suitable for collegial processing,

9) the execution of orders of any kind issued by the District Court or the Departmental Court of Appeal.

§. 23. The institution of the District Judicial Councils shall be abolished. The civil servants concerned shall not be entitled to compensation.

## 2. Court of Appeal.

§. 24. Of the 24 Royal High Courts currently existing in the monarchy, excluding the Court of Appeal in Cologne, the following shall be abolished.

1) the Higher Appeal Court in Posen, 2) the Tribunal in Königsberg, 3) the Court of Justice together with the Consistory at Greifswald shall be abolished. The remaining 21 higher court authorities, namely: the Supreme Court and the higher Regional courts in Insterburg, Königsberg, Marienwerder, Bromberg, Posen, Stettin, Cöslin, the Higher Appeal court in Greifswald and the Higher Regional courts in Frankfurt, Breslau, Glogau, Ratibor, Naumburg, Halberstadt, Magdeburg, Münster, Hamm, Baderborn and Arnsberg, as well as the Justice Senate in Ehrenbreitstein, shall remain in existence, subject to further provisions regarding the same, through a special regulation.

§. 25. These higher judicial authorities, with the exception of the judicial senate at Ehrenbreitstein, shall be called "courts of appeal". They shall be divided into senates according to need and shall consist of a (first) president, one or more senate presidents or division conductors and the required number of judges. Assessors may be employed by the same only on a temporary basis as a temporary substitute or as a deputy as required by the business situation.

The courts of appeal, together with the judicial senate at Ehrenbreitstein, shall hand over the legal matters of the exiled persons, which according to the provisions of this ordinance belong before the ordinary courts, to those courts in accordance with instructions to be issued by the Minister of Justice. In future, they shall be responsible for civil and criminal matters.

- 1) the appellate instance for all appeal matters in its district,
- 2) the appeal instance for all appeal matters of the same,
- 3) the supervisory and appeal authority for all district and municipal courts in its district.

They also retain:

- 4) the feudal, family entail and family foundation matters that have hitherto belonged to their jurisdiction, as long as no other provision has been made by the legislature regarding feuds and entail commissions, and the foundation cases, provided that the administration is expressly transferred to the higher court in the foundation deed,
- 5) the granting of certifications and attestations in the previous manner,
- 6) all other matters which have previously been submitted to the higher courts or their First Presidents and which belong neither to contentious nor voluntary jurisdiction, as: judicial visitations, disciplinary and employment matters.

If these matters require a depository administration, the courts of appeal shall use the depository of the court of first instance located in the place in question. Their own depositories shall be dissolved,

§. 26. The judicial officials who become available to the Royal Courts as a result of this Ordinance shall be employed elsewhere by judicial authorities of first or second instance, with their consent, as public prosecutors, justice commissioners and notaries, while retaining their rank and salary.

### 3. High Tribunal.

§. 27. The unification of the Rhenish Court of Revision and Cassation with the Privy High Tribunal in Berlin, which shall be effected in accordance

with Article 91 of the Constitutional Charter, and which shall henceforth bear the name: Ober-Tribunal, shall be reserved to a special law.

§. 28. The Higher Tribunal shall henceforth be the third and highest instance in cases from the district of the Greifswald Court of Appeal.

#### 4. Fees.

§. 29. The existing fee tables shall be subject to revision. Until then, the fees in civil proceedings shall be assessed in accordance with the Fees Act of October 9, 1833 and July 26, 1847. Insofar as the fee regulations of August 23, 1815. are still applicable, until the revision of the Sportel legislation, the appellate courts shall be liquidated according to the fee regulations for higher courts, the district and city courts according to the fee regulations for lower courts in large cities, and the individual judges according to the regulations for all lower courts.

In cases of injuria which are heard in civil proceedings, the judge shall determine the column of fees according to which the costs are to be liquidated, without regard to the status of the parties, at his discretion guided by the nature of the case.

Parties who have used the services of a lawyer shall henceforth be entitled to claim reimbursement of the expenses incurred for the lawyer from the opponent ordered to pay the costs of the proceedings in all proceedings, with the exception of small claims proceedings, in respect of which the existing provisions shall continue to apply.

#### 5. judicial commissioners, advocates and notaries.

§. 30. The judicial commissioners and advocates, whose appointment for certain judicial districts shall remain subject to the existing provisions, shall assume the official character of "legal practitioner".

As a rule, the lawyers to be employed by the High Tribunal and the Courts of Appeal for the future should not be assigned the simultaneous function of a notary.

In towns with 30,000 or more inhabitants, special notaries can be appointed.

§. 31. Contracts for the division of real property, for the division of individual parts thereof and for the separation of associated real property (Section 2 of the Act of January 3, 1845, Collection of Laws p. 25) may henceforth also be validly recorded by notaries; they are, however, obliged to send such contracts to the court which has to keep the mortgage register of the property concerned immediately after recording.

#### IV. General provisions.

##### 1. With regard to the proceedings in general.

§. 32. The hearings before the court of cognizance, whereby the presentation of the speaker may be made orally, even if the law requires a prior written statement of the facts, and the pronouncement of judgments shall be public without restriction. Exceptions for certain matters are determined by law.

In all cases, the court may, by an order to be publicly announced, order the exclusion of the public if it deems this appropriate for reasons of public welfare or morality.

For New Western Pomerania and the Eastern Rhine, a special ordinance shall be issued on the further implementation of the above provision.

§. 33. The judgments shall be drawn up in such a way that they contain in the superscription the words: In the name of the King, followed by a list of the parties and the name of the recognizing court. If the court rendering the judgment is a collegial court, the names of the judges must also appear in the copies of the judgments.

§. 34. The provision of §. 32. shall also apply to appeal cases to be dealt with in accordance with the Cabinet Order of August 8, 1832 (Law Gazette P. 199.) in such a way that the final decisions issued in the case of §. 3. Litt. d. of that decree shall be announced in open court upon oral presentation by the speaker.

When the application for appeal or the notice of appeal is communicated to the opposing party for counter-execution, in addition to the deadline for the latter, the date of the hearing for the announcement of the appeal decision must also be determined and the appellant must be informed of this. No further special summons of both parties is required.

§. 35. Appeals against court rulings in all procedural matters shall follow the course of appeal admissible against decisions in these matters in both civil and criminal matters.

In non-litigious matters, the court of appeal is the sole court of appeal for the district and municipal courts within its jurisdiction, so that its decision is final.

Only such complaints which concern discipline, business operations or delays (p. 37. of the ordinance of July 21, 1846., Collection of Laws p. 301.) are to be settled in all legal matters through supervisory channels, i.e. ultimately by the Minister of Justice.

With regard to the legal matters of the courts of appeal mentioned in §. 25. No. 4. 5. 6. the previous provisions shall remain in force.

## 2. Appointment and qualification of judicial officers.

§. 36. The presidents and councillors of the High Tribunal and the Courts of Appeal, as well as the directors and councillors of the district and municipal courts, shall be appointed by Us, whereas assessors, lawyers, notaries and trainee lawyers shall be appointed in Our name by the Minister of Justice.

The appointment of public prosecutors and their assistants is governed by the Ordinance on the Introduction of Oral and Public Proceedings in Investigation Matters.

Trainee judges who have passed the major state examination shall be appointed as court assessors until they are employed elsewhere and, like the existing unpaid senior court assessors, shall be transferred to a district or municipal court as unpaid members if they are not employed temporarily by a court of appeal in accordance with §. 25. or by the State Attorney's Office. The granting of full voting rights to such court assessors shall depend on the determination of the Minister of the Interior, but the number of unsalaried members with full voting rights at a court may never reach half the number of full-time judges.

§. 37. With regard to the qualifications necessary for the administration of the judgeships and the legal examinations, a revision of the existing



regulations is reserved. For the administration of the office of a director at all district courts, the passing of the major state examination is required.

No person may hold a tenured judgeship at the Higher Tribunal who has not served for at least four years as a judge or senior public prosecutor at an appellate court, and no person may become a tenured member of an appellate court who has not previously been employed for at least four years at a higher court and for the fifth time at a district or municipal court as a judge or definitely as a public prosecutor.

Lawyers must possess the qualifications of the members of the court at which they wish to be employed.

These provisions shall only apply to civil servants already employed to the extent that they are to be promoted to a higher post.

### 3. Relationship with the administrative authorities.

§. 38. The relationship between the courts and the administrative authorities shall not be changed by the present Act. They shall assist each other in the performance of their duties within their respective departments; but the administrative authorities are not authorized to issue instructions to the judicial sub-authorities in matters within their departments, nor to require them to obey them. The contrary provision of the order of December 31, 1823. under L. No. XII. (Law Gazette of 1826. p. 11.) is repealed.

### 4. Final provisions.

§. 39. The judicial authorities shall receive new budgets in which their district, place of residence and the number of their officials, as well as their salaries, shall be determined. Until then, the existing funds shall be used to pay the necessary civil servants as determined by the Minister of Justice.

§. 40. All provisions contrary to this Ordinance are repealed.

§. 41. The present ordinance shall enter into force on April 1 of this year. Our Minister of Justice is charged with its implementation and shall provide the judicial authorities with the necessary further instructions.

If the execution should not be possible by April 1st of the 3rd due to special concerns and local obstacles, the later date which becomes necessary as a result shall be determined by him and made public.

Authenticated under Our Supreme Signature and the Royal Seal.

Given Potsdam, January 2, 1849.

(L. S.) Friedrich Wilhelm

Gr. v. Brandenburg, v. Ladenberg, v. Manteuffel, v. Strotha.

Rintelen. v. d. Heydt. For the Minister of Finance Kühne. v. Bülow.

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### **3. Ordinance on the Introduction of Oral and Public Proceedings with Juries in Investigation Cases, dated January 3, 1849.**

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree in execution of Articles 92. and 93. and on the basis of Article 105. of the Constitutional Charter for the entire extent of Our Monarchy with the exclusion of the district of the Court of Appeal at Cologne, at the request of Our Ministry of State, as follows:

Section I. - General provisions on the procedure for investigations.

Prosecution trial.

§. 1. The courts shall not intervene ex officio in the initiation and conduct of investigations into a violation of the law, but only on complaint.

Public prosecutor's office.

§. 2. A chief public prosecutor shall be appointed to each court of appeal and a public prosecutor shall be appointed to each district or municipal court from among the number of officials qualified for the higher judicial office,

whose official duty it shall be to bring about the investigation of the perpetrators of crimes and to prosecute them in court.

Every public prosecutor shall, as far as the need requires, be assigned assistants by the Minister of Justice, who shall be under his supervision and must follow his instructions, but shall be entitled to perform all his duties wherever they act for him.

§. 3. The senior public prosecutors, public prosecutors and their assistants are not judicial officials. They shall not be subject in the performance of their duties to the supervision of the courts, but the public prosecutors shall be subject to the supervision of the Chief Public Prosecutor and the latter together with them to that of the Minister of Justice, whose instructions they shall comply with. The final appointment of senior public prosecutors and public prosecutors is made by us at the request of the Minister of Justice.

Relationship of the public prosecutor's office to other authorities.

§. 4. The police authorities and other security officials shall retain their statutory duty to investigate crimes and to take all preparatory measures that do not permit delay in order to clarify the matter and provisionally arrest the perpetrator, observing the provisions of the Act of September 24, 1848 (Law Collections p. 257-259.). They shall, however, forward the proceedings they have taken up to the public prosecutor concerned for further action, and shall also comply with the latter's requests for the initiation or completion of such preliminary police investigations.

§. 5. The courts are obliged to inform the public prosecutor immediately of crimes which come to their knowledge officially, to comply with the requests addressed to them by the public prosecutor to establish the facts of the case and for other necessary investigations, and, if necessary, to appoint an examining magistrate.

If there is imminent danger, the court shall, even without an application by the public prosecutor, make all such investigations, arrests or other orders as are necessary to prevent the case from being obscured. The proceedings in this regard shall be communicated to the public prosecutor in the near future.

§. 6. It is the duty of the public prosecutor to see to it that in criminal proceedings the provisions of the law are complied with everywhere. He

must therefore not only ensure that no guilty person escapes punishment, but also that no one is prosecuted without guilt.

§. 7. Investigation hearings, arrests or seizures shall not be conducted by the public prosecutor himself, unless there is imminent danger and the case of apprehension in the act, but he shall apply for such hearings either to the police authority or to the court concerned, depending on the circumstances. However, he is authorized to attend all police and court hearings relating to matters within his area of responsibility, to enter into direct contact with the official who is to conduct the hearing, and to address his requests and communications to this official in order to further the purpose of the investigation.

§. 8. The public prosecutor shall be free at all times to inspect all police and court files relating to a matter within the scope of his business. It is also part of his profession to remedy any incompleteness, delays or other irregularities which he perceives in the investigations by making applications to the superior authority of the official conducting the investigation.

§. 9. Crimes for which the law makes punishment dependent on the request of a private person may only be prosecuted by the public prosecutor if this has been requested by that person. However, in such cases, as well as in the case of crimes of other kinds where the parties concerned apply to him, he is authorized to refuse prosecution if he does not consider it justified by law.

Appeals against such refusals shall be decided by the Chief Public Prosecutor.

§. 10. The Chief Public Prosecutor shall have the power to assume the functions of the Public Prosecutor's Office in the courts of first instance in his district himself or through one of his assistants if he deems this expedient.

§. 11. An investigation must be opened by a formal order of the court.

§. 12. The public prosecutor may appeal to the court of appeal against the decision of a court rejecting the application to open an investigation within a preclusive period of ten days, which begins at the end of the day on which notification of the decision was given. The decision of this court must stand. \*)

§. 13. Both during the preliminary investigation and during the entire course of the judicial investigation, the court shall be entitled to decide on the arrest or release of the accused.

Appeals against the court's decision shall be heard by the competent court of appeal, whose decision shall stand.

The oral and public nature of the proceedings.

§. 14. The rendering of the judgment shall be preceded, under penalty of nullity, by oral public proceedings before the sentencing court, at which the public prosecutor and the defendant shall be heard, evidence shall be taken and the defence of the defendant shall be made orally.

§. 15. The court may exclude the public from hearings by an order to be publicly announced if it deems this appropriate for reasons of public welfare or morality.

### Defence.

§. 16. The accused may in all cases, but if a preliminary investigation takes place (Section 42 et seq. 75 et seq.) only after the conclusion thereof, avail himself of the assistance of a defence counsel.

In the case of serious crimes (§. 60.), the accused must be appointed a defence counsel ex officio if he has not chosen one.

§. 17. The defence counsel, whether the defendant is under arrest or not, must be given access to the remand papers in the court registry on request. It is not permitted to hand them over to the defence counsel.

§. 18. Coercive means of any kind by which the accused is to be compelled to make any statement are inadmissible.

§. 19. If evidence has been taken on the spot by means of an inspection, the minutes taken must be read out at the oral proceedings.

§. 20. The judge may immediately have the bailiff present any witnesses who have not been summoned but who are in the vicinity, but military personnel in active service may only be presented with the permission of their superiors.

The same applies to witnesses who have been duly summoned but have failed to appear. If such a witness has not excused his absence in advance, the court may, without further proceedings, impose on him a fine of up to 20 Rthlr. or imprisonment for up to eight days, and the obligation to pay all costs incurred by the attendance of a new hearing caused by him. The court shall only grant a waiver of this penalty and release from the obligation to pay costs if the witness sufficiently excuses his absence within 14 days of service of the penalty order.

\*) It would therefore appear that an appeal to the High Tribunal would not be admissible. However, the High Tribunal has nevertheless deemed an appeal and overturning of the decisions of the Court of Appeal to be admissible.

§. 21. If the examination of a witness cannot take place during the oral proceedings due to illness, old age, great distance or other unavoidable obstacles, it shall be arranged otherwise, and in such cases, as well as if a witness previously examined by the court has died in the meantime, the record of the examination shall be read out during the oral proceedings.

### Evidence and judgment.

§. 22. The existing statutory provisions on the procedure for taking evidence, in particular also on which persons may be examined and sworn as witnesses, shall also remain authoritative.

On the other hand, the previous positive rules on the effects of evidence no longer apply. From now on, the sentencing judge must decide whether the accused is guilty or not guilty, after carefully examining all the evidence for the charge and defence, according to his free conviction based on the totality of the proceedings before him. However, he is obliged to state in the judgment the reasons which guided him in this decision. \*)

Provisional acquittal (acquittal by the court) should no longer be granted.

§. 23. The person declared guilty shall be sentenced to the full statutory penalty.

P. 24. It is not necessary to inform the convicted person of the legal remedies to which he is entitled.

§. 25. Absent and fugitive criminals shall be summoned by means of edicts at the request of the public prosecutor. SS. 577. 578. 580. 581. 585. and 587. of the Criminal Code shall cease to have effect, whereas the provisions of SS. 579. 582. 583. 584. and 586. shall remain in force.

§. 26. The decisions of the court and its divisions shall be taken by a majority of votes, even if it is a question of passing judgment. There shall be no further confirmation of the judgment by the Minister of Justice.

## Section II - Special provisions on the examination procedure.

### 1. For misdemeanors.

§. 27. The investigation and the decision of the first instance in respect of those offenses which in the laws with

fine of up to 50 thalers,  
or  
imprisonment for up to six weeks,  
or  
corporal punishment, which is now replaced by proportional imprisonment,

or are threatened with several of these penalties at the same time shall be decided by a single judge appointed for this purpose with the assistance of a court clerk.

The jurisdiction of the single judge also applies if, in addition to these penalties, honorary sentences are also to be imposed.

Excluded from the jurisdiction of the single judges, however, are cases in which either the loss of offices, titles or dignities, or the right to carry on an independent business is to be recognized at the same time, or in which the conviction necessarily results in the loss of honorary rights \*\*) or civil rights for the criminal in accordance with the statutory provisions.

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\*) The earlier provision that the person declared "not guilty" could not be brought to trial again for the same offense is missing here. Any acquittal is therefore now only provisional.

\*\*\*) The loss of the national cockade is not included here.

§. 28. In investigations of this kind, the business of the Public Prosecutor shall be administered by officials whom the President of the Government shall appoint for this purpose on a provisional basis after hearing the Chief Public Prosecutor, and over whose conduct of office the Chief Public Prosecutor shall exercise supervision. The Chief Public Prosecutor shall decide on complaints lodged against these officials for refusing to bring charges.

For the rest, everything that is laid down concerning the duties and powers of the public prosecutors, their relationship to the courts, and the necessity of their attendance at the hearing before the recognizing judge shall also apply to these police prosecutors.

§. 29. The charge may be made in writing or orally.

§. 30. If the accused is brought before the judge at the same time as the indictment is filed, and if he confesses to the offense with which he is charged, or if the evidence for the indictment and defence is at hand, the judge must, as a rule, conduct the investigation and pass sentence on the spot.

If the defendant is under arrest, he must be produced immediately on receipt of the indictment.

§. 31. If, in the case of §. 30, the judgment cannot be rendered immediately, but the accused is under arrest, he must be heard immediately about the evidence serving as his defence, and thereupon a hearing must be scheduled as soon as possible for the oral proceedings and for the decision of the case, to which the witnesses proposed by both sides about certain facts are to be summoned, provided the judge considers the circumstances about which they are proposed to be material.

§. 32. If the accused cannot be brought before the court immediately, he shall be summoned to the oral proceedings by a written order, which must state the facts of the offense with which he is charged and contain the summons:



To appear at the appointed hour and to bring with him the evidence serving his defence, or to notify the judge of such evidence in sufficient time before the hearing so that it can still be brought to the same.

At the same time, the defendant must be given a warning:

That in the event of his absence, the investigation and decision should proceed in contumaciam.

§. 33. The defendant's request for a new date may only be granted on the basis of certified substantial obstacles.

p. 34. At the hearing, after the indictment has been presented by the police attorney and the defendant has been questioned about it, the taking of evidence shall proceed as far as necessary, the police attorney shall be heard with his motions and the defendant with his defence, but then the verdict shall be rendered and announced with reasons.

However, the judge is authorized to stay the judgment and to set a date for the continuation of the proceedings.

§. 35. If the defendant does not appear at the hearing despite having been duly summoned, or if he refuses to make a statement on the charge at the hearing, the evidence shall be taken and, after hearing the police lawyer and any counsel appearing for the defendant, the judgment shall be pronounced and delivered. The defendant who has failed to appear shall be served with a copy of the judgment.

§. 36. If, in assessing the act of the accused, the judge finds that it contains a crime whose statutory penalty exceeds his judicial competence, he shall refer the case to the competent court by order. Disputes over jurisdiction shall be decided by the court of higher instance.

§. 37. A sworn court clerk shall take minutes of the proceedings at the hearing, which must contain the essential content of the statements of the police attorney, the defendant and the witnesses, and in which the written judgment with its reasons shall be recorded at the same time. The judge and the court clerk shall execute these minutes.

## 2. For crimes.

§. 38. The investigation and the decision at first instance shall be made by court divisions consisting of three members, with the assistance of a court clerk, with regard to

1) those offenses referred to in §. 27, which have been excluded from the jurisdiction of the individual judges in the final provision of the same;

2) of those crimes which in the laws with

Fines, the maximum amount of which exceeds 50 Rthlr,

or

Imprisonment with a maximum sentence of six weeks but not more than three years,

or

are threatened with these two penalties at the same time, even if they also result in the loss of office, honour or other rights by law;

3) such official crimes which are either only punishable by dismissal from office, cassation and declaration of incapacity for all public offices, or which are also punishable by penalties which, however, do not exceed the penalties mentioned under 2;

4) the second and third great common theft or theft committed under aggravating circumstances and the first theft by force.

In those parts of the country in which the General Law of the Land does not have the force of law, the measure of punishment established by judicial usage shall decide with regard to the competence of No. 1. 2. 3. but in cases where this is doubtful, the provision of the General Law of the Land shall apply.

§. 39. It is necessary to formally open an investigation against a specific person:

1) an indictment to be drawn up by the public prosecutor, which must contain: the name of the defendant, a description of the offense with which he is charged, the evidence for it, in particular the names of the prosecution

witnesses whose examination the public prosecutor demands, and the name of the crime with which the defendant is charged;

2) a decision of the court department ordering the opening of the investigation on the basis of this indictment, in which the name of the accused and the crime with which he is charged are to be specified.

§. 40. The court division shall deliberate and decide whether to open an investigation into the indictment without the presence of the public prosecutor.

If the court considers the opening of the investigation to be inadmissible, it shall also order the release of the accused if he is under arrest.

§. 41. If the court division does not yet find the case sufficiently prepared to decide on the formal opening of the investigation, it shall specify the points in respect of which further clarification is still required in the order to be issued and shall communicate this order to the public prosecutor for settlement.

§. 42. If the public prosecutor considers a preliminary investigation necessary to substantiate or complete the indictment, the court shall appoint an examining magistrate at his request.

§. 43. During the preliminary investigation, the examining magistrate shall observe all the provisions of the Criminal Code for the Inquirer, in particular the provision concerning the appointment of a sworn recorder.

§. 44. The purpose of the preliminary investigation is: to investigate and establish the existence and nature of the reported crime, as well as the person of the offender and the evidence serving to convict him, to the extent that this appears necessary to substantiate an indictment and to prepare the main oral investigation.

The examining magistrate must therefore not extend his inquiries further than is necessary for this purpose.

§. 45. The witnesses examined in the preliminary investigation shall be sworn in by the examining magistrate, unless there are legal reasons to the contrary (§. 22.).

§. 46. The accused may also be questioned in the preliminary investigation if this appears expedient to clarify the circumstances of the case. If the accused is under arrest, he must always be questioned.

§. 47. Once the preliminary investigation has been completed, the examining magistrate shall submit the files to the public prosecutor for the submission of the necessary applications.

If the public prosecutor requests that further proceedings be discontinued, the court shall decide on this and, if it agrees with the request, order the files to be returned, even if the accused is under arrest, order his release. However, if the public prosecutor or the court considers the formal initiation of the investigation to be justified, the public prosecutor shall submit the indictment, which shall then be decided by the court division.

§. 48. If it is decided to open the investigation, the court division shall at the same time set a date for the oral proceedings.

§. 49. If the accused is under arrest, the indictment and the decision shall be read to him and he shall be heard as to whether and what evidence he requires to be produced in his defence, and in particular what witnesses he requires to be called. If the defendant is unable to make a statement on this immediately, he shall be given a reasonable period of time to do so.

§. 50. If the arrested defendant is assisted by a defence counsel, the latter is entitled to request a copy of the indictment and the decision.

§. 51. If the defendant is not under arrest, he shall be summoned in writing with a copy of the indictment and the order under section 32.

§. 52. Witnesses shall be summoned, regardless of whether they have already been examined in the preliminary investigation or not, all those whose examination is deemed necessary by the public prosecutor or the court, or requested by the accused, if the court finds the circumstances about which the examination of the witnesses is requested to be material. For this purpose the facts must be stated with particularity. The prosecutor and the accused shall be notified of the witnesses summoned.

§. 53. In the interim until the hearing, the arrested defendant, if he has a defence counsel, shall be permitted to confer with him, without the presence of a court person, if the defence counsel is a judicial officer under oath and duty.

§. 54. The chairperson of the court division shall be responsible for conducting the oral proceedings, in particular the examination of the accused and the witnesses.

§. 55. Witnesses who have already been examined on oath in the preliminary investigation shall not be sworn anew when they are heard again, but shall be referred to the oath they have taken.

§. 56. If the defendant who has been duly summoned fails to appear at the hearing, the court may, if for special reasons it does not consider it appropriate to apply the summary procedure, order the defendant to be produced or arrested at another hearing and adjourn the case.

§. 57. The court division shall deliberate on the judgment without the presence of other persons.

P. 58 If the court, in assessing the act of the accused, finds that it contains a crime of a lesser nature than that which is initially assigned to its jurisdiction, it shall nevertheless pass sentence.

§. 59. If the deliberations cannot be concluded on the same day, or if the judgment with the reasons cannot be delivered immediately, the court shall fix a new date for the delivery of the judgment, which, however, may not be postponed for more than eight days. days may not be postponed.

### 3. For serious crimes.

§. 60. The investigation and decision with regard to

1) those crimes which are punishable under the law by a sentence of imprisonment of more than three years and which are not among those specified in §. 38,

2) political and press crimes,

shall be heard by a court consisting of five judges and a court clerk, with the addition of jurors as associate judges. The chairman of this court shall be appointed by the First President of the Court of Appeal and may also select one of its members for this purpose.

§. 61. For the purposes of this Act, the crimes listed in the General Land Law, Title 20, Sections 2 to 5 inclusive, shall be deemed to be political crimes. In those parts of the country in which the General Land Law does not have the force of law, the categories of crimes listed in the sections of the Land Law shall be decisive, and in doubtful cases the provisions of the General Land Law.

However, the violations of the law contemplated in §§. 157. to 160. 166. 180. to 195. 207. to 213. are not to be regarded as political crimes; nor do they include those offenses committed by the press in which the punishment is conditional on the application of a private person, or in which the punishment consists only of the fines threatened by the law of March 17, 1848 (Law Collection p. 69.) §. 6.

### Section III - About the jury courts.

#### Formation of the jury lists.

§. 62. Only persons who have the status of a Prussian, are 30 years of age, are in full enjoyment of civil rights, can read and write, and have resided for at least one year in the municipality in which they reside may be appointed as jurors.

§. 63. Jurors may not be appointed:

- 1) the Ministers and Undersecretaries of State,
- 2) the judicial officers, the public prosecutors and their assistants,
- 3) the district presidents, provincial tax directors, district councillors, police presidents, police directors,
- 4) military personnel in active service,
- 5) the religious servants of all denominations,
- 6) the elementary school teachers,
- 7) Servants,
- 8) those who are 70 years old,

9) those who do not pay at least 18 Thlr. per annum in class tax or 20 Thlr. in land tax (not including the assessments) or 24 Thlr. in trade tax, or would have to pay according to their circumstances if one of these types of taxation existed.

Irrespective of the tax rate mentioned under 9, however, the following are eligible for election as jurors: lawyers and notaries, professors, licensed physicians and those civil servants who are either directly appointed by Us or receive an income of at least 500 Thlrn per annum and do not belong to the categories excluded above.

§. 64. For each rural district, a master list shall be drawn up annually in the month of September by the district president, and for each town which does not belong to a rural district, by the magistrate, and where there is no magistrate's college, by the board of the municipal administration, containing those persons who may be called as jurors according to their first and last names, status, age and place of residence in alphabetical order and under consecutive numbers.

§. 65. The original list must be made available for inspection by anyone for three days at a place to be made public.

If someone claims to have been omitted without reason or to have been registered without taking into account the reason for exemption, he must submit his objections for the record within the three-day period.

If the authority responsible for drawing up the list considers the objections to be justified, the subsequent entry or deletion shall be made within three days of the expiry of the three-day objection period.

§. 66. The completed original lists shall be collected by the district council, in large towns which belong to a fine rural district, by the head of the municipal administration and sent to the president of the government in whose district they are included, who shall definitively determine them and from them prepare a special annual list for each jury district of those persons from this district whom he considers suitable to serve as jurors for the forthcoming financial year.

In addition, he shall compile a list of suitable supplementary jurors from the persons who live at the size of the jury court or in its immediate vicinity, the number of whom he shall determine at his discretion.

If a jury district is located in several government departments, the president of the jury court shall decide to which government president the original lists are to be sent and which is responsible for drawing up the jury lists.

§. 67. Fourteen days before the beginning of each session of the jury court concerned, the President of the Government shall send a list of 60 persons drawn from the annual list to the court located at the size of the jury court.

The supplementary list shall be sent to the court before the beginning of the financial year for use during the course of the same.

§. 68. The judicial officer appointed to preside over the jury court shall reduce the number of 60 to 36 by selecting the persons he deems suitable. These 36 persons shall be appointed as jurors in the jury court for the relevant session.

Accordingly, anyone who has taken part in jury trials as a juror may not be summoned again for one year without their consent.

§. 69. The dates for the holding of jury sessions shall be fixed and announced by the courts concerned according to the volume of business.

§. 70. The Court of Appeal shall have the power to order another court to hold the jury trial at the request of the public prosecutor if there is reason to fear that the trial of the case before the competent court will disturb public order.

§. 71. The 36 jurors selected shall be summoned by the court concerned on the day set for the opening of the hearing.

§. 72. After hearing the Public Prosecutor, the Court shall decide in open court on the grounds for excusing those jurors who have either failed to appear or who present their requests for discharge at the opening or during the course of the court session.

Jurors who fail to appear or absent themselves without sufficient excuse shall, after being heard responsibly, be fined up to 100 thalers, in the event of recurrence up to 200 thalers, and an appeal against such a penalty order shall only be lodged with the Court of Appeal within a ten-day preclusive period.



§. 73. If, at the beginning of the trial of a case, there are fewer than 30 jurors as a result of the non-appearance of individual jurors or the dismissal or leave of absence granted to them, the presiding judge of the court shall increase the number of jurors from the supplementary list to 36 by drawing lots.

The supplementary jurors must obey the summons of the presiding judge without delay in order to avoid the penalty specified in §. 72.

§. 74. Jurors who reside more than one mile from the place of the court shall, if they so request, receive a travel allowance of 8 silver coins for each mile of the outward and return journey; they shall not be paid per diems.

### Opening of the investigation.

§. 75. In the case of political crimes and crimes against the masses which are not punishable by law with a greater penalty than that specified in Section 38, Sections 39 to 47 inclusive shall apply with regard to the opening of the investigation. If it is decided to open the investigation, the previous proceedings shall be handed over to the competent jury court and the public prosecutor assigned to it.

In all other cases, the oral proceedings before the jury must always be preceded by a preliminary hearing in which the defendant must be heard.

§. 76. If, after the conclusion of the preliminary investigation, the public prosecutor requests that the accused be placed on the state of accusation, this request shall be decided on by a division of the competent court consisting of three members.

§. 77. If the court deputation deems it necessary to supplement the preliminary investigation, it shall instruct the examining magistrate to do so, who shall submit the files to the public prosecutor once the order has been completed.

§. 78. If it declares itself in favour of the transfer to the state of accusation, the proceedings shall be submitted to the Court of Appeal. The proceedings shall be submitted to the Court of Appeal, whose criminal division consisting of five members shall, after hearing the Chief Public Prosecutor, make a final decision on the transfer to the state of accusation by means of an order. Following this decision, which at the same time orders the

case to be referred to no particular jury court, the Chief Public Prosecutor shall draw up the formal indictment within a period to be fixed as a rule at no longer than eight days, which shall be sent to the court competent to hold the jury court and its public prosecutor.

#### Main proceedings. a. Summons and account proceedings.

§. 79. The accused who is not under arrest shall be summoned to the main trial before the jury by a written order containing the summons, together with a copy of the indictment and the order referred to in section 78: to appear at the appointed hour and to bring the evidence serving his defence with him or to notify the judge of such evidence in good time before the hearing so that it can still be brought to the hearing.

At the same time, the defendant must be given a warning, that in the event of his absence, the decision should be dealt with in contumaciam \*.

\* Note: Contumaciam - in contempt of or in disobedience to a judicial order or summons of a court (failure to appear).

A period of at least eight days must elapse between the delivery of the summons and the date of the hearing, unless the defendant himself waives this period.

§. 80. If the defendant who has been duly summoned fails to appear at the hearing, the Court shall, after hearing the public prosecutor, issue a contumacious verdict without the participation of the jury.

§. 81. If the convicted person appeals against the contumacial judgment within three days after it has been delivered to him to the court which pronounced it, the judgment shall be deemed not to have been pronounced and the case shall be remitted to the jury for a new trial.

There will be no further appeal against the forthcoming judgment.

§. 82. The accused shall be served with a list on the day before the trial of the case, which must contain the names, status and place of residence of those jurors from whom the jury for his case is to be drawn.

If there are fewer than 30 jurors on the day of the trial and if, therefore, additional jurors must be called. If fewer than 30 additional jurors are present

on the day of the trial and additional jurors must therefore be summoned, the names of these additional jurors must be announced to the defendant if he was not present when they were summoned.

b. Formation of the jury court.

§. 83. The jury court shall be constituted for each case on the day on which it is to be heard in open court, at which the presiding judge, the clerk of the court and the public prosecutor or a representative thereof must be present.

§. 84. If disputes arise concerning the constitution of the jury court, the other judges of the division must be consulted, and no decision can be made without their participation.

§. 85. The names of the jurors shall be called in the presence of the accused, who may be assisted by his counsel. The name of each juror who answers the call shall be placed by the clerk of the court in an urn from which the names shall be drawn.

§. 86. The names are drawn from the ballot box by the presiding judge. As soon as a name has been drawn, first the official of the public prosecutor's office and then the defendant or his counsel shall declare whether he accepts or rejects the juror by saying: "Accepted" or "Rejected". The rejection or withdrawal is no longer admissible if a further name is drawn from the ballot box.

§. 87. The jury for the individual case is constituted at the moment when the names of 12 jurors who have not been challenged are drawn from the ballot box.

§. 88. In any case, the right to reject expires as soon as there are only 12 non-rejected names in the ballot box. \*)

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\*) It is assumed here that both parties have made use of all rejections to which they are entitled. If this has not been the case, the right of rejection shall continue to apply even if there are only 12 unrejected names or fewer in the ballot box. (Decision of the High Tribunal.)

§. 89. It is not necessary to state reasons for the rejection.

§. 90. Half of the total number of refusals is due to the public prosecutor, the other half to the defendant, or if there are several in one and the same case, to all of them.

§. 91. If the total number is an odd number, the public prosecutor is entitled to one less challenge than the defendant.

§. 92. If several defendants are involved in one and the same case, they must agree on the joint exercise of the right of recusal.

§. 93. The jury for the case must consist of twelve persons, under penalty of nullity.

§. 94. The Court may order that, in addition to the 12 jurors, one or more jurors shall be summoned in the order determined by lot to attend the trial as alternate jurors in the event that it should become impossible for one of the jurors to remain present until the end of the trial.

§. 95. No person may be a juror in a case in which he has acted as a witness, interpreter, expert or police officer, or would otherwise not be able to participate as a judge according to general legal provisions, under penalty of nullity.

§. 96. The members of the constituted jury shall take their seats in the order determined by lot.

§. 97. Before the trial begins, the presiding judge must address the jury with the words:

"You swear and pledge before God and man that in the matter of the indictment against N. you will devote yourselves to the duties of your profession as jurors with conscientiousness, firmness and loyalty, and impartially, for the love of no one and for the harm of no one, to render a conscientious verdict between the accused and the law, which you are to enforce."

as jurors, and the jurors accept this obligation with the oath: "I swear it, so help me God", by raising their right hand.

c. Trial of the case before the jury.

§. 98. The hearing of the case begins with the reading of the indictment by the court clerk:

The presiding judge questions the defendant:  
whether he pleaded guilty or not guilty?

If he pleads guilty and there is no doubt as to the correctness of the plea, the court shall pass judgment immediately without calling a jury.

Otherwise, the investigation and trial of the case before the jury begins.

The conduct of the trial, in particular the examination of the accused and the witnesses, shall be the responsibility of the presiding judge. The presiding judge must allow the public prosecutor, and may allow the accused or his counsel, as well as the jury, to put questions directly to the parties involved which they consider appropriate to clarify the case.

§. 99. The court clerk shall take minutes of the proceedings at the hearing, which must contain the names of the judges and jurors, as well as the essential content of the statements of the public prosecutor, the defendant and the witnesses, and in which the written judgment is to be recorded at the same time.

These minutes shall be signed at the end by the presiding judge and the court clerk.

Observance of the prescribed formalities cannot be proven otherwise than by the minutes.

§. 100. The hearing with the accused and the witnesses is followed by the statement of the public prosecutor and the defence counsel on the question of the offense. \*) The presiding judge must then summarize the course of events and the result of the taking of evidence in a brief presentation, draw attention to any legal provisions which may be relevant in assessing the question of fact, and finally put the questions to be answered by the jury in such a way that they can be answered in the affirmative or negative.

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\*) Some courts wrongly assume that the defendant may no longer speak after the advocate. Defence counsel and defendant are identical and the latter always has the right to speak.

§. 101. The question begins with the words: "Is the accused guilty?" and must contain all the factual elements of the crime for which the charge has been pronounced.

§. 102. If aggravating circumstances have arisen during the hearing which were not mentioned in the indictment, the presiding judge shall put the additional question:

"Did the defendant commit the crime with this or that circumstance?"

§. 103. A special question shall be asked in appropriate cases concerning the facts which exclude the imposition of a sentence or justify the application of a lighter sentence in accordance with express statutory provisions. The question of sanity shall be decided by the jury at the time of the verdict of guilty.

§. 104. The Chairman reads out the questions asked under penalty of correctness. If the public prosecutor or the accused submits reminders against the same, the Court shall decide.

§. 105. The presiding judge must inform the jury, under penalty of nullity, that if, by a majority of only seven votes, they find the accused guilty of the offense or of the aggravating circumstances accompanying the offense, they must expressly indicate this when making their declaration, but that only six jurors' votes are required to accept circumstances which, according to the law, mitigate the penalty (p. 111.).

§. 106. The presiding judge shall hand over the written questions to the jury and have the accused removed from the courtroom.

§. 107. The jurors shall go to their deliberation room and there elect by majority vote their foreman, who shall preside over the deliberation and announce its result.

§. 108. The jurors may not leave the deliberation room until they have decided on their verdict.

No one may enter the deliberation room without written authorization from the presiding judge, who must order that the entrance to the room be guarded.

§. 109. The foreman of the jury shall question them according to the order in which the questions are put, and each juror shall answer as follows:

1) If the juror is of the opinion that the offense has not been proven or that the defendant has not been convicted of it, he shall declare:

"No, the defendant is not guilty."

In this case, the juror has nothing further to answer.

2) If he is of the opinion that the accused is guilty of the offense with the circumstances contained in the question (§§. 102. and 103), he shall answer:

"Yes, the defendant is guilty with the circumstances contained in the question."

3) If he is of the opinion that the accused is guilty of the offense, but that none of those special circumstances have been proven, he shall answer:

"Yes, the defendant is guilty, but none of the special circumstances have been proven."

4) If he is of the opinion that the accused is guilty of the offense, but that only some of the circumstances have been proven, he shall declare:

"Yes, the defendant is guilty of having committed the offense with such and such a circumstance, but the other circumstance or circumstances have not been proven."

§. 110. In assessing guilt or non-guilt, each juror must decide according to his free and conscientious conviction, based on a careful examination of all the evidence for the prosecution and defence:

whether the defendant is guilty  
or  
was not guilty.

§. 111. The decision is made by majority vote.

If, however, the verdict of guilty with regard to the offense or the aggravating circumstances accompanying the offense is only reached by a majority of seven votes against five, the court itself shall deliberate and decide by majority vote on the point determined by the jury by a simple majority.

It is sufficient for six jurors to agree to the existence of such circumstances which, according to the express provisions of the law, mitigate criminal liability \*).

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\*) And for the acquittal itself too.

§. 112. After the jurors have reached their verdict and returned to the courtroom, the presiding judge shall question them on the results of their deliberations.

The foreman of the jury rises and says:

"On my honour and conscience, before God and man, I testify that the verdict of the jury is:

Yes, the defendant is guilty, etc.

or

No, the defendant is not guilty."

§. 113. If the decision is to the disadvantage of the accused with regard to the offense or the circumstances aggravating the offense, the foreman must expressly state whether it was reached by more than seven votes or only by seven votes against five; the presiding judge must therefore question the foreman of the jury separately each time if this statement is omitted, and have the result recorded in the minutes under penalty of nullity. result in the minutes, under penalty of nullity.

§. 114. The verdict of the jury shall be signed in the minutes or in an appendix thereto by the foreman of the jury, the presiding judge and the clerk of the court.

§. 115. If the Court finds that the verdict is not regular in form or not exhaustive in substance, it may, at the request of counsel for the State or of



the defendant, or on its own motion, order the jury to return to the deliberation room in order to remedy the defect. This measure is permissible as long as a judgment of the Court has not been rendered on the basis of the verdict.

The improvement must be made in such a way that the jury's original verdict remains recognizable.

§. 116. If the judges are unanimously of the opinion that the jurors, although their verdict is regular in form, have erred in the matter, the court shall refer the case to another session to be tried before a new jury, in which none of the former jurors may participate.

This measure may not be requested by anyone; the Court may only impose it ex officio, immediately after the jury's verdict has been read out at the hearing, and never to the detriment of the defendant.

After the second verdict of the jury, even if it agrees with the first verdict, the court must pronounce judgment.

#### d. Verdict.

§. 117. After the defendant has been led back into the courtroom, the court clerk reads out the jury's verdict.

§. 118. If the accused has been declared not guilty, the Court shall acquit him of the charge and order that he be released immediately, unless he is arrested for some other reason.

§. 119. If, in the course of the proceedings, the accused is accused of another crime or offense by documents or testimony, the Court shall immediately make the further necessary order and may, if the legal requirements are met, immediately issue an arrest warrant.

§. 120. If the defendant has been declared guilty, the State Bar shall submit its application for application of the law.

§. 121. The presiding judge shall ask the defendant whether and what he has to say in his defence.

The defendant or his counsel may no longer dispute or question the facts established in the jury's verdict; their execution must be limited to the legal consequences to be derived from them.

§. 122. The judges then retire to the deliberation room to pass judgment.

§. 123. The deliberation on the judgment shall take place without the presence of other persons. §. 124. A majority of votes shall decide the judgment.

§. 125. If the act of which the accused has been declared guilty is not provided for by a criminal law, the Court shall acquit the accused.

## Section IV - Contesting the findings.

### 1. Appeal submission.

§. 126. Both the public prosecutor's office and the defendant have the right to appeal against the judgments handed down by the single judges and the court divisions for crimes (§§. 27. 38.) within a preclusive period of ten days. The appellant may only challenge what has been accepted by the first judge as factually established\*) by means of new facts or new evidence, and the appellate judge must assess whether these new facts and new evidence are relevant.

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\*) Several courts assume that factual findings are only to be understood as the objective external appearances and not the decision of the first judge on the internal motive of the act.

§. 127. The ten-day time limit for appeal begins at the end of the day on which the first judgment was pronounced. If the judgment was pronounced in the absence of the defendant, the time for appeal shall not begin to run for the defendant until the end of the day on which the judgment was delivered to him.

§. 128. The appeal must be lodged with the court of first instance either orally for the record or in writing.

§. 129. The statement of the complaints, their justification and the presentation of new facts or evidence may be made at the same time as the notice of appeal, but if this has not been done, it must be made within the ten days following the date of the notice of appeal. However, the court is authorized to extend this period appropriately at the request of the appellant depending on the circumstances.

§. 130. The notice of appeal shall be sent to the appellant with the summons:

to indicate within a period of ten days whether and which new facts or evidence he has to provide.

If the public prosecutor has appealed and the defendant is under arrest, the contents of the notice of appeal shall be read out to him and the aforementioned request for the minutes shall be made known; if he has a defence counsel, he shall be served with a copy of the notice of appeal on request.

§. 131. If the court of first instance rejects the appeal as not having been lodged in time, the person whose appeal has been rejected may lodge a complaint with the court of appeal within a preclusive period of ten days, which begins at the end of the day on which he was notified of the decision rejecting the appeal. The decision of this court must stand.

§. 132. The hearing and decision of the second instance shall be made by a division of the competent court of appeal consisting of five members and a clerk.

§. 133. The Chief Public Prosecutor is responsible for the operation of the case in the second instance.

§. 134. After the files have been received by the court of second instance, it shall set a date for the oral proceedings and summon the senior public prosecutor, the defendant, if he is not under arrest, and those witnesses whose examination is deemed necessary with reference to the provision of section 126.

If the defendant is under arrest, he may only be represented at the hearing by a defence counsel who must be appointed ex officio at his request. The defendant who is not under arrest is also free to be represented at the hearing by an authorized counsel.

§. 135. If the Court of Appeal considers the personal appearance of the defendant to be necessary for special reasons, it may order the defendant to be produced or presented.

§. 136. In the oral proceedings, which shall be presided over by the presiding judge, a speaker appointed from among the members of the court shall first give an oral account of the proceedings that have taken place up to that point.

The appellant is then heard with his complaints, the appellee with his counter-statements, and after the taking of evidence, if such takes place, the public prosecutor with his motions, but in all cases finally the accused or his defence counsel, and the verdict is rendered thereupon.

If both the public prosecutor and the defendant have appealed, both appeals shall be decided at the same time.

In all other respects, the provisions issued for the first instance shall also apply to the oral proceedings of the second instance.

§. 137. There shall be no further appeal against a judgment on appeal in respect of the offenses referred to in section 27.

## 2. Complaint about correctness.

§. 138. Appeal findings concerning the crimes specified in section 38 and findings of the jury courts (section 60) may be challenged by an appeal for annulment. \*)

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\*) There is therefore no appeal for annulment against the findings of the single judge.

§. 139. The appeal for annulment is upheld:

1) on account of the transfer of formalities in the proceedings, compliance with which is prescribed under penalty of nullity,

2) for the transfer of a criminal law.

§. 140. In addition to the formalities expressly mentioned in sections 14, 93, 95, 104, 105, 113, the following shall apply as formalities of the proceedings, the transfer of which shall result in nullity:

- 1) if the defendant has not been heard in cases in which a contumacial proceeding was not allowed to take place;
- 2) if the accused has been without the assistance of a defence counsel in cases in which the law prescribes defence;
- 3) if the judgment has been issued without the public prosecutor's office having been heard with its application beforehand;
- 4) if the required number of judges were not present at the court;
- 5) if the Court has been the incompetent judge.

§. 141. Both the public prosecutor and the accused are entitled to an appeal for annulment

The public prosecutor is not entitled to an appeal for annulment if a jury has declared a not guilty verdict.

The appeal for annulment must be lodged in writing with the court that rendered the judgment of first instance within a preclusive period of ten days from the date of pronouncement or, if a contumacial proceeding has taken place, from the date of delivery of the judgment to the defendant, stating the points of appeal.

The defendant is permitted to declare his appeal for annulment either immediately upon the pronouncement of the judgment, or within the ten-day preclusive period on record, or by means of a document to be submitted to the court. This document must be legalized by a legal expert qualified to hold judicial office.

§. 144. The court shall notify the public prosecutor of the defendant's complaint and the public prosecutor's complaint to the defendant and his counsel for counterstatement within a ten-day preclusive period in copy, and after expiry of this period shall send the files to the higher tribunal, notifying the parties.

§. 145. The decision on the appeal for annulment shall be made upon oral presentation by a panel of seven members of the High Tribunal in a public hearing to be announced only by notice at the court office.

§. 146. The duties of the Public Prosecutor's Office at the Higher Tribunal shall provisionally be performed by the Public Prosecutor's Office at the Court of Appeal.

§. 147. Only the Jufti Commissioners employed by the High Tribunal shall have the right to represent the accused before the Court of Justice.

§. 148. If the appeal for annulment is based on incorrect application or non-application of a criminal law (Section 139 No. 2.) and if the High Court considers it to be justified, it shall destroy the contested judgment and decide on the merits of the case or, if factual investigations are still required, refer the case to the court of the instance concerned for further hearing and decision.

§. 149. If the appeal for annulment is based on a transfer of formalities, the High Court shall, if it considers the appeal to be justified, destroy the contested judgment and order that it be heard and decided elsewhere before the court to be designated by it.

§. 150. A copy of the judgment of the High Tribunal shall be sent to the court for announcement or delivery to the defendant, and shall also be sent to the public prosecutor on request.

### 3. Restitution.

§. 151. The convicted person may at any time appeal against any final judgment by way of restitution if he is able to show that the judgment is based on a false document or on the testimony of a perjured witness.

§. 152. The application for restitution must be filed with the court that made the judgment at first instance.

§. 153. If the person who is alleged to have committed the forgery or perjury can still be prosecuted, the crime allegedly committed by him must first be legally established by a judicial investigation to be initiated against him before the application for restitution can be granted.

In other cases, the application for restitution submitted by the defendant shall first be forwarded to the public prosecutor in order, if he deems it necessary, to arrange for a preliminary judicial inquiry into the facts cited as grounds for restitution and then to resubmit the application with his statement thereon.

§. 154. If the application for restitution is rejected by the court as unfounded, the claimant is free to lodge an appeal with the court of higher instance within ten days of receiving the decision. Any further appeal is inadmissible.

§. 155. If an application for restitution is considered well-founded, the court shall immediately renew the oral proceedings in the form prescribed for the infringement in question and, setting aside its previous judgment, shall deliver a new judgment against which the ordinary appeals are admissible.

§. 156. SS. 532. 588. 589. of the Criminal Code shall cease to have effect. Consequences of the lodging of an appeal on the detention of the accused.

§. 157. The filing of an appeal by the public prosecutor may never delay the release of the defendant in custody if the judgment has not imposed a custodial sentence on him.

§. 158. If the accused is sentenced to imprisonment, the appeal lodged by the public prosecutor against the judgment does not suspend the commencement of the sentence.

§. 159. On the other hand, the defendant's filing of an appeal or appeal for annulment suspends the execution of the sentence. Provisional removal of the person sentenced to imprisonment to prison is not permitted, even with his or her consent. However, the court is authorized and obliged to take the necessary precautionary measures against the convicted person.

Annulment of the appeal of aggravation.

§. 160. The legal remedy of aggravation does not apply in the cases dealt with in this ordinance.

Section V. - Procedure for the investigation of police offenses.

§. 161. The provisions of this section shall apply to all investigations for police offenses.

§. 162. The administration of this police jurisdiction shall be conducted in the first instance by individual judges, who shall be appointed provisionally for this business.

§. 163. The prosecution of offenders of the police penal laws in court shall be carried out by police attorneys, in respect of whose appointment, supervision, powers and duties the provisions contained in SS. 28. following shall apply.

### 1. Ordinary procedure.

§. 164. In the investigation and decision at first instance, the police judges shall, as a rule, apply the same procedure as that prescribed for misdemeanours.

However, the defendant is free to be represented at the hearings both in this instance and in the next instance by an authorized representative from the number of judicial commissioners entitled to practice at the court at his own expense. \*)

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\*) A complete representation of the accused can only be carried out by judicial commissioners, but a mere defence can also be conducted by other persons.

§. 165. Both the defendant and the police lawyer are entitled to appeal against the judgment of the first instance within a preclusive period of ten days, the beginning of which is to be determined in accordance with the provision relating to the time limit for appeal.

The appeal cannot be based on new evidence of facts already stated, but on new facts only to the extent that they are attested at the same time as they are stated.

§. 167. The appeal must be lodged with the police judge orally for the record or in writing. No special time limit shall be allowed for justification of the appeal.



§. 168. The decision on the appeal shall be made by a division of the Court of Appeal consisting of three members.

§. 169. If, on examination of the file, the division finds that the appeal is not admissible or, if reference is made only to the proceedings at first instance, that it is not well founded, it shall dismiss the appellant by an order against which no further appeal is allowed.

§. 170. In all other cases, the deputation shall set a date for the oral proceedings, notifying the other party of the notice of appeal. There shall be no further appeal against the judgment handed down on appeal.

## 2. Mandate procedure.

§. 171. If the indictment for a police offense is based on the complaint of a public official who reports the offense from his own official perception, including a military person in the service, and if the accused is not brought before the police judge at the same time, in which case the ordinary procedure must always take place, the police judge shall determine the penalty on the basis of the indictment and notify the accused of it by means of a written order with its meaning,

that, if he should find himself aggrieved by this sentence, he must appear before the police judge to defend himself on a date to be fixed immediately in the order and for at least ten days, but if he appears before the judge on this date, he must expect the sentence to be enforced.

§. 172. This order must state:

1) the nature of the offense, as well as the time and place of its commission;

2) the name of the official who reported the offense, and

3) the sentence, stating the penal provision on which it is based.

In the event that the defendant believes that he will not be able to calm down when the sentence is imposed, the order must at the same time contain a request to the defendant to bring the evidence serving as his defence to the scheduled hearing, or to notify the judge of such evidence in good time before the hearing so that it can still be brought to the same.

§. 173. If the defendant appears at the hearing in person or by an authorized representative, the following procedure shall be followed in accordance with the provisions of section 164; if he does not appear, the judge shall make a note of this.

§. 174. The accused may apply for restitution if he has been prevented by unavoidable circumstances from appearing in person at the hearing. The application for restitution must be submitted to the police judge within ten days of the date of the hearing and must state the reasons for the impediment and the required certificate. The judge may not take into consideration uncertified reasons for obstruction. The sentence shall not be enforced until this period has expired without result.

§. 175. If the police magistrate finds the application for restitution to be well-founded, a hearing shall be scheduled as soon as possible and the proceedings shall be conducted in accordance with the provisions of sections 164 et seq.

If the defendant fails to appear again on this date, the sentence shall be enforced without any further right of appeal.

§. 176. If the judge finds the application for restitution to be unfounded, he shall reject it by a resolution against which the accused may appeal to the Court of Appeal. This appeal must be lodged with the police judge within 24 hours of service of the resolution. If the decision is in favor of allowing the restitution, the case shall be returned to the police judge for trial at first instance.

§. 177. In order to decide on the application for restitution and on the appeal against the resolution rejecting it, the police prosecutor must first be heard.

## Section VI - Costs of the investigation procedure.

§. 178. When the accused is sentenced to a penalty, whether in the first or a later instance, he shall at the same time be ordered to pay all the costs of the proceedings. If, on the other hand, the accused is declared not guilty, he or she shall not bear the costs of the proceedings and shall be released from the obligation to do so if the same was imposed on him or her by a judgment of a previous instance.

§. 179. The costs of an unsuccessfully lodged appeal shall be borne by the party who lodged the appeal. If this is the public prosecutor, they shall be set aside. If time limits and deadlines are missed, the defaulting party shall bear the resulting costs.

## Section VII - General provisions.

§. 180. The courts shall have the power to remove from the courtroom any person who causes a disturbance in the public session, and, after the public prosecutor has been heard, to immediately impose and enforce a prison sentence of up to eight days against such persons.

§. 181. The provisions of this Act shall not alter the procedure for timber theft and disciplinary matters against civil servants. Investigations into tax frauds and contraventions, as well as infractions against civil servants in the exercise of their office or in relation to it, including insults to persons in the service of the armed forces, shall henceforth be dealt with in accordance with Section II. and Section III. of this Ordinance and shall also be subject to the provisions of the same with regard to appeals.

From now on, all other offenses, with the exception of serious real offenses, can only be prosecuted in civil proceedings.

§. 182. The fiscal investigation process does not take place further.

§. 183. All provisions contrary to this Ordinance shall be repealed to the extent that they are incompatible with the provisions of this Ordinance.

At the Court of Appeal and the Criminal Court of Berlin, it replaces the law of July 17, 1846. (Law Collections p. 267. ff.).

The present ordinance shall enter into force on April 1 of this year, and until then, Our Ministers of the Interior and Justice shall make the necessary arrangements for its implementation, in particular with regard to the formation of jury lists.

The cases pending at this time, in which the formal investigation has already been opened, shall, with the exception of political and press crimes (§. 60. No. 2., §. 61.), be brought to a conclusion in accordance with the previous provisions through all instances permitted by the same.

On the other hand, in the case of political and press crimes which have not yet been adjudicated in the first instance, the proceedings shall be diverted in accordance with the provisions of the present Ordinance.

Authenticated under Our Supreme Signature and the Royal Seal.

Given Potsdam, January 3, 1849.

(L. S.) Friedrich Wilhelm.

Count of Brandenburg. v. Ladenberg. v. Manteuffel. v. Strotha.

Rintelen. v. d. Heydt. For the Minister of Finance: Kühne. v. Bülow.

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#### **4. Introductory Regulation to the General Bill of Exchange Regulations for Germany. From January 6, 1849. \*)**

The most important innovation of this bill of exchange system is that every person capable of making dispositions is now also capable of making bills of exchange, and that the bill of exchange process itself is significantly simplified. Previously, only incorporated merchants, owners of manors, etc. were eligible to exchange.

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\*) See below the law of 15 February 1850 concerning the introduction of the general bill of exchange regulations in Germany, which contains additions to the bill of exchange regulations, namely with regard to the amortization of bills of exchange.

We, Frederick William, by the Grace of God, King of Prussia etc. etc. decree the following with regard to the introduction of the General German Bill of Exchange, which We bring to public knowledge in the annex, at the request of Our Ministry of State on the basis of Article 105 of the Constitutional Charter for the entire extent of the monarchy:

§. 1. The General German Bills of Exchange published in the Imperial Law Gazette of November 27. I. shall enter into force in Prussia on February 1 of this year.

On the other hand, the validity of the previous bill of exchange regulations expires on this day, namely SS. 713. to 1249. tit. 8. Thl. II. of the General Land Law, as well as Articles 110. to 189. of the Rhenish Commercial Code, shall cease to have effect.

§. 2. Amortization of a bill of exchange shall be applied for before the ordinary court of the place of payment, and where commercial courts exist, before these courts.

The applicant must provide a copy of the bill of exchange or at least state the essential content of the bill of exchange and everything that the court considers necessary for its complete recognizability, and also provide prima facie evidence of possession and loss.

The court issues a public summons to the unknown holder of the bill of exchange to submit the bill of exchange to the court within a certain period of time, with the warning that otherwise the bill of exchange will be declared invalid.

The summons shall be posted at the court house or at another public place deemed appropriate, and if there is a stock exchange at the place of payment, at the stock exchange premises, and shall be inserted once in the official gazette and three times in a domestic or foreign newspaper.

The court is authorized to post the summons in several places and have it inserted in several newspapers if this appears appropriate under the circumstances.

The period for notification shall be set at a minimum of six months and a maximum of one year from the expiry date. If the bill of exchange is presented by a holder, the applicant shall be informed thereof and given the opportunity to assert his right against the holder. If no holder comes forward, the court shall, on further application by the claimant, declare the bill of exchange to be amortized.

§. 3. In the district of the Court of Appeal in Cologne, the judicial officers who can take up protests also include the bailiffs.

§. 4. Protests may only be lodged from 9 a.m. to 6 p.m., and at an earlier or later time of day only with the consent of the protester.

§. 5. Actions on bills of exchange may be brought both in the court of the place of payment and in the court in which the defendant has his personal jurisdiction. If several bill debtors are sued together, any court other than the court of the place of payment to which one of the defendants is personally subject shall have jurisdiction.

The court before which an action on a bill of exchange has been brought in accordance with this provision must soon be joined by all parties liable on a bill of exchange who are summoned by a party in accordance with the procedural laws in force in the various parts of the country to pay recourse or who are sued after due notice of dispute has been given.

§. 6. In the district of the Court of Appeal at Cologne, actions arising from promissory notes shall also be brought before the Commercial Courts if they are neither signed by traders nor have commercial transactions as their cause (Article 636. 637. of the Rhenish Commercial Code).

Authenticated under Our Supreme Signature and the Royal Seal.

Given Charlottenburg, January 6, 1849.

(L. S.) Friedrich Wilhelm.

Count of Brandenburg. v. Ladenberg. v. Manteuffel. v. Strotha.

Rintelen. v. d. Heydt. For the Minister of Finance: Kühne.  
Gr. v. Bülon.

## **General German Bill of Exchange Regulations.**

First section. - On the ability to change.

Art. 1. Anyone who can bind himself by contract is eligible.

Art. 2. The debtor of the bill of exchange is liable for the fulfillment of the assumed bill of exchange obligation with his person and his assets.

However, alternating detention is not permitted:

- 1) against the heirs of a bill debtor;
- 2) from bills of exchange issued by the representatives of corporations or other legal entities, joint stock companies or in the affairs of such persons who are incapable of managing their own assets;
- 3) against women, if they are not engaged in trade or another business.

The extent to which, for reasons of public law, the enforcement of detention on bills of exchange against persons other than those mentioned above is subject to restrictions is determined by special legislation.

Art. 3. If the signatures on a bill of exchange are of persons who cannot enter into a bill of exchange obligation at all, or not with full success, this has no influence on the obligation of the other parties liable on the bill.

## Second section. - On drawn bills of exchange.

### I. Requirements of a drawn bill of exchange.

Art. 4. The essential requirements of a drawn bill of exchange find:

- 1) the designation to be included in the bill of exchange itself as a bill of exchange, or, if the bill of exchange is issued in a foreign language, an expression corresponding to that designation in the foreign language;
- 2) the amount of money to be paid;
- 3) the name of the person or company to whom or to whose order payment is to be made (the remitter);
- 4) the indication of the time at which payment is to be made; the payment time can only be fixed

on a specific day,

at sight (presentation, a vista etc.) or for a certain time after sight,

for a certain period after the date of issue (after date),

to a trade fair or market (change of trade fair or market);

5) the signature of the issuer (drawer) with his name or company name;

6) the place, day of the month and year of the exhibition;

7) the name of the person or company who is to make the payment (the drawee or trustee);

8) the indication of the place where the payment is to be made; the place indicated under the name or company name of the drawee is deemed to be the place of payment for the bill of exchange, unless a separate place of payment is indicated, and at the same time the place of residence of the drawee.

Art. 5. If the sum of money to be paid (Art. 4. No. 2) is expressed in letters and in figures, the sum expressed in letters shall apply in the event of discrepancies.

If the sum is written several times with letters or several times with numbers, the lower sum applies in the event of discrepancies.

Art. 6. The issuer may designate himself as the remitter (Art. 4. No. 3.) (bill of exchange to own order).

Similarly, the drawer may designate himself as the drawee (Art. 4. No. 7.) if the payment is to be made at a place other than the place of issue (trassirt bills of exchange).

Art. 7. A document which lacks one of the essential requirements of a bill of exchange (Art. 4.) does not give rise to an obligation under a bill of exchange. Nor do declarations made on such a document (endorsement, acceptance, aval) have the force of a bill of exchange.

## II Obligations of the exhibitor.

Art. 8. The drawer of a bill of exchange is liable for its acceptance and payment.



### III. Endorsement.

Art. 9. The remitter may transfer the bill of exchange to another party by endorsement (giro).

However, if the drawer has prohibited the transfer in the bill of exchange by the words "not to order" or by an equivalent expression, the endorsement has no legal effect.

Art. 10. By the endorsement all rights arising from the bill of exchange pass to the endorser, in particular also the power to endorse the bill further. The bill of exchange may also be validly endorsed to the drawer, drawee, acceptor or a former endorser and may be further endorsed by the same.

Art. 11. The endorsement must be written on the bill of exchange, a copy thereof or a sheet attached to the bill of exchange or copy (called an allonge in French).

Art. 12. An endorsement is valid if the endorser merely writes his name or company name on the back of the bill of exchange or the copy, or on the allonge (blank endorsement).

Art. 13. Every holder of a bill of exchange is authorized to fill in the endorsements in blank on the same; he may, however, continue to endorse the bill without such filling.

Art. 14. The endorser is liable to any subsequent holder of the bill of exchange for its acceptance and payment. But if he has added to the endorsement the words "without guarantee", "without obligation" or a reservation of the same meaning, he is released from the obligation arising from his endorsement.

Art. 15. If the words "not to order" or an equivalent expression in the endorsement prohibit the transfer of the bill, those to whom the bill passes from the hand of the endorser have no recourse against the endorser.

Art. 16. If a bill of exchange is endorsed after the period fixed for protesting in default of payment has expired, the endorser acquires the rights arising from the acceptance, if any, against the drawee and rights of recourse against those who have endorsed the bill after the expiration of that period.

If, however, the bill of exchange has already been protested for lack of payment before the endorsement, the endorser has only the rights of his endorser against the acceptor, the drawer and those who have endorsed the bill of exchange up to the protest. In such a case the endorser is also not bound by the bill of exchange.

Art. 17. If the endorsement is accompanied by the words "for collection", "in procuration" or some other formula expressing authorization, the endorsement does not transfer ownership of the bill, but authorizes the endorser to collect the bill, to protest it and to notify the foreman of his endorser of the non-payment (Art. 45.), as well as to sue for the unpaid bill and to collect the deposited bill. Such an endorser is also entitled to transfer this power to another person by a further procuration endorsement. On the other hand, the same person is not authorized to issue further bills by actual endorsement even if the addition "or order" is added to the proxy endorsement.

#### IV. Presentation for acceptance.

Art. 18. The holder of a bill of exchange is entitled to present the bill to the drawee immediately for acceptance and, in the absence of acceptance, to have it protested. Only in the case of fair or market bills of exchange is an exception made to the effect that such bills may only be presented for acceptance and protested in the absence of acceptance at the time of presentation determined by law at the fair or market place. The mere possession of the bill of exchange authorizes the presentation of the bill of exchange and the filing of a protest for lack of acceptance.

Art. 19. The obligation of the holder to present the bill of exchange for acceptance applies only to bills of exchange which are payable at a specified time at sight. Such bills of exchange must be presented for acceptance within two years of their issue, in accordance with the special provision contained in the bill of exchange, in the event of the loss of the claim against the endorser and the drawer. If an endorser of a bill of exchange of this kind has added a special presentation period to his endorsement, his obligation under the bill shall lapse if the bill has not been presented for acceptance within this period.

Art. 20. If the acceptance of a bill of exchange presented at sight for a certain time cannot be obtained, or if the drawee refuses to date his acceptance, the holder must have the timely presentation of the bill of exchange established by a protest lodged within the presentation period (Art.

19.) in the event of loss of the claim under the bill of exchange against the endorsers and the drawer.

In this case, the protest day applies to the day of the presentation.

If the protest has not been lodged, the period of expiry of the bill of exchange shall be counted from the last day of the presentation period against the acceptor who has failed to date his acceptance.

## V. Acceptance.

Art. 21. The acceptance of the bill of exchange must be made in writing on the bill of exchange.

Any declaration written on the bill of exchange and signed by the drawee shall be deemed to be an unrestricted acceptance unless it expressly states that the drawee either does not wish to accept it at all or only wishes to accept it subject to certain restrictions.

The same applies to an unrestricted acceptance if the drawee writes his name or company name on the front of the bill of exchange without any further endorsement.

Once accepted, it cannot be withdrawn.

Art. 22. The drawee may limit the acceptance to a part of the sum prescribed in the bill of exchange.

If other restrictions are attached to the acceptance, the bill of exchange shall be deemed equivalent to a bill of exchange whose acceptance has been completely refused, but the acceptor shall be liable in accordance with the contents of his acceptance.

Art. 23. The drawee is bound by the acceptance of a bill of exchange to pay the sum accepted by him on the due date: The drawee is also liable to the drawer under the bill of exchange. On the other hand, the drawee has no right against the drawer.

Art. 24. If a place of payment other than the place of residence of the drawee (Art. 4. No. 8.) is indicated in the bill of exchange (domicile bill of exchange), then, if the bill of exchange does not already indicate by whom the payment is to be made at the place of payment, this must be noted by the

drawee on the bill of exchange at the time of acceptance. If this has not been done, it shall be assumed that the drawee himself intends to make the payment at the place of payment.

The issuer of a bill of exchange of domicile may stipulate presentation for acceptance in the same. Failure to comply with this provision shall result in the loss of recourse against the issuer and the endorsers.

## VI Recourse to security.

### 1. Due to non-receipt of acceptance.

Art. 25. If a bill of exchange has not been accepted at all, or has been accepted with restrictions, or only for a smaller sum, the endorsers and the drawer are obliged under the bill of exchange to provide sufficient security, against delivery of the protest recorded in the absence of acceptance, that the payment of the sum prescribed in the bill of exchange or of the amount not accepted, as well as the reimbursement of the costs caused by the non-acceptance, will be made on the due date.

However, these persons are also authorized to deposit the amount owed at their own expense with the court or with another authority or institution authorized to accept deposits.

Art. 26. The remitter, as well as every endorser, is authorized by the possession of the protest taken in default of acceptance to demand security from the drawer and the other principals and to sue for it by way of a bill of exchange process.

The recourse holder is not bound by the subsequent order of the endorsements and the choice once made.

It is not necessary to provide the bill of exchange and proof that the recourse holder himself has provided security to his subordinates.

Art. 27. The security furnished is not only liable to the assignee, but also to all other subordinates of the customer, in so far as they take recourse against him for security. The latter are entitled to demand further security only if they can justify objections to the nature or amount of the security provided.

Art. 28. The security provided must be returned:

- 1) as soon as the bill of exchange has been accepted in full;
- 2) if no action for payment under the bill of exchange has been brought against the party liable for recourse who ordered it within one year of the date of maturity of the bill of exchange;
- 3) when payment of the bill of exchange has been made or the bill of exchange has expired.

## 2. Due to uncertainty of the acceptor.

Art. 29. If a bill of exchange has been accepted in whole or in part, security may only be demanded in respect of the sum accepted:

- 1) if bankruptcy proceedings (debit proceedings, falliment) have been initiated against the Acceptor's assets or if the Acceptor has merely suspended payments;
- 2) if, after the bill of exchange has been issued, an enforcement against the assets of the acceptor has been unsuccessful or the execution of personal detention has been ordered against the acceptor due to fulfillment of a payment obligation.

If in such cases security is not furnished by the acceptor and a protest is therefore lodged against him, and if acceptance cannot be obtained from the emergency addresses named on the bill of exchange after the protest has been proved, the holder of the bill of exchange and any endorser may demand security from his predecessors against delivery of the protest. (Art. 25-28.) The mere possession of the bill of exchange takes the place of a power of attorney to demand security from the acceptor in the cases mentioned in Nos. 1 and 2, and if such security cannot be obtained, to have a protest lodged.

## VII. Fulfillment of the bill of exchange liability.

### 1. Day of payment.

Art. 30. If a specific day is designated as the payment date in the bill of exchange, the maturity period shall commence on that day. If the payment

date has been set for the middle of a month, the bill of exchange is due on the 15th of that month.

Art. 31. A bill of exchange presented at sight is payable on presentation. A bill of exchange of this kind must be presented for payment within two years from the date of issue in the event of the loss of the claim against the endorsers and the drawer in accordance with the special provision contained in the bill. If an endorser has added a special presentation period to his endorsement on a bill of exchange of this kind, his obligation under the bill shall lapse if the bill has not been presented within this period.

Art. 32. In the case of bills of exchange payable on the expiry of a certain period at sight or by date, the period of maturity shall commence:

1) if the period is determined by days, on the day set for the period; in calculating the period, the day on which the bill payable by date is issued or the bill payable at sight is presented for acceptance is not included;

2) if the period is determined by weeks, months or a period comprising several months (year, half year, quarter), on the day of the payment week or the payment month which corresponds by its designation or number to the day of issue or presentation; if this day is missing in the payment month, the expiry period shall commence on the last day of the payment month.

The expression "half a month" is equated to a period of 15 days. If the bill is set to one or more whole months and half a month, the 15 days are to be added.

Art. 33. Days of respect shall not take place.

Art. 34. If, in a country where the old style of reckoning is used, a bill of exchange payable in the country is issued according to date, and it is not stated that the bill is dated according to the new style, or if it is dated according to both styles, the day of expiration shall be calculated according to the calendar day of the new style which corresponds to the day of issue according to the old style.

Art. 35. Fair or market bills of exchange shall fall due for payment at the time determined by the laws of the place of the fair or market, and in the absence of such determination on the day before the legal closing of the fair or market. If the fair or market lasts only one day, the bill of exchange shall expire on that day.

## 2. Payment.

Art. 36. The holder of an endorsed bill of exchange is legitimized as owner of the bill by a continuous series of endorsements extending down to him. The first endorsement must therefore be signed with the name of the person whom the immediately preceding endorsement designates as the endorsee. If a blank endorsement is followed by a further endorsement, it is assumed that the drawer of the latter has acquired the bill through the blank endorsement. Endorsements that have been crossed out are regarded as unwritten when the legitimacy is checked. The payer is not obliged to check the authenticity of the endorsement.

Art. 37. If a bill of exchange is denominated in a coin which does not circulate at the place of payment, or in a currency of account, the amount of the bill may be paid in the national coin according to its value at the time of maturity, unless the drawer has expressly stipulated payment in the coin denominated in the bill by the use of the word "effective" or a similar addition.

Art. 38. The holder of the bill of exchange may not refuse a partial payment offered to him even if the acceptance is for the full amount of the sum prescribed.

Art. 39. The party liable on a bill of exchange is only obliged to pay against delivery of the receipted bill of exchange. If the debtor has made a partial payment, he may only demand that the payment be copied on the bill and that he be given a receipt on a copy of the bill.

Art. 40. If payment of the bill of exchange is not demanded at the time of maturity, the acceptor is entitled, after the expiry of the period fixed for protesting in default of payment, to deposit the bill of exchange at the risk and expense of the holder with the court or with another authority or institution authorized to accept deposits. The holder need not be summoned.

## VIII Recourse for non-payment.

Art. 41. In order to exercise the right of recourse against the issuer and the endorsers in the event of non-payment, the following is required:

- 1) that the bill of exchange has been presented for payment, and

2) That both this presentation and the non-receipt of payment are shown by a protest made in due time.

A protest may be lodged on the day of payment, but must be lodged no later than the second working day after the day of payment.

Art. 42. The request not to lodge a protest ("without protest", "without costs" etc.) is deemed to be a waiver of the protest, but not a waiver of the duty to present the bill in due time. The party obligated by the bill of exchange from which such a request emanates must assume the burden of proof if he denies that the presentation was made on time. This request does not protect against the obligation to reimburse the protest costs.

Art. 43. Domiciled bills of exchange must be presented for payment to the domiciliary, or if no such domiciliary is named, to the drawee himself at the place where the bill of exchange is domiciled, and if payment is not made, a protest must be lodged there. If the protest is not lodged with the domiciliary in due time, the claim under the bill of exchange is lost not only against the drawer and the endorser, but also against the acceptor.

Art. 44. With the exception of the case mentioned in Art. 43, neither the presentation on the day of payment nor the lodging of a protest is required to preserve the right of the bill against the acceptor.

Art. 45. The holder of a bill of exchange protested for non-payment is obliged to give written notice of the non-payment of the bill of exchange to his immediate foreman within two days from the date of the protest, for which purpose it is sufficient if the notice is posted within that period. Each notified foreman must notify his next foreman in the same way within the same period, to be calculated from the location of the report received. The holder or endorser who fails to give notice or does not give notice to the immediate predecessor is thereby obliged to compensate all predecessors or those who have been bypassed for the loss arising from the failure to give notice. He also loses his claim to interest and costs against these persons, so that he is only entitled to claim the amount of the bill of exchange.

Art. 46. If it is a question of proving that written notice was given to the addressee in due time, it is sufficient for this purpose to prove by a postal receipt that a letter was sent by the party concerned to the addressee on the date indicated, unless it is shown that the letter received had a different



content. The date of receipt of the written notification received can also be proved by a postal receipt.

Art. 47. If an endorser has transferred the bill of exchange without adding a place designation, the foreman of the same must be notified of the non-payment.

Art. 48. Every debtor of a bill of exchange has the right to demand from the holder, against reimbursement of the amount of the bill, together with interest and costs, the delivery of the receipted bill and of the protest lodged for non-payment.

Art. 49. The holder of a bill of exchange protested for want of payment may institute proceedings against all the obligors or only against some or one of them, without thereby forfeiting his claim against the obligors not claimed. The latter is not bound by the order of endorsements.

Art. 50. The rights of recourse of the holder who has protested the bill for want of payment are limited to the following:

- 1) the unpaid amount of the bill plus 6 percent annual interest from the date of maturity,
- 2) the protest costs and other expenses,
- 3) a commission of 1/3 percent.

If the party liable for recourse resides in a place other than the place of payment, the above amounts must be paid at the rate of exchange which a bill of exchange drawn from the place of payment to the place of residence of the party liable for recourse has at sight. If there is no exchange rate at the place of payment to that place of residence, the exchange rate shall be taken according to the plague closest to the place of residence of the party liable to recourse. At the request of the party liable to recourse, the exchange rate shall be certified by an exchange slip issued under public authority or by the certificate of a sworn broker or, in the absence thereof, by a certificate of two merchants.

Art. 51. The endorser who has honoured the bill of exchange or received it as a remittance is entitled to receive it from a previous endorser or from the drawer:

- 1) the sum paid by him or adjusted by remittance plus 6 percent annual interest from the date of payment,
- 2) the costs incurred by him,
- 3) a commission of 1/3 of the price.

The above amounts must be paid, if the party liable to recourse resides in a place other than the recourse taker, at the exchange rate which a bill of exchange drawn from the place of residence of the recourse taker to the place of residence of the party liable to recourse has at sight: If there is no exchange rate from the place of residence of the recourse taker to the place of residence of the recourse debtor, the exchange rate shall be taken according to the rate closest to the place of residence of the recourse debtor. With regard to the certification of the rate, the provision of Art. 50. shall apply.

Art. 52. The provisions of Art. 50. and 51. nos. 1. and 3. do not exclude the calculation of higher sums admissible there in the case of recourse to a foreign place.

Art. 53. The recourse taker may draw a bill of exchange on the recourse debtor for the amount of his claim. In this case, the broker's fees for negotiating the bill of exchange and any stamp duties shall be added to the claim. The bill of exchange must be made payable on sight and immediately (a drittura).

Art. 54. The party liable to recourse is only obliged to make payment against delivery of the bill of exchange, the protest and a receipted return invoice.

Art. 55. Any endorser who has satisfied one of his descendants may strike out his own and his descendants' endorsements.

## IX. Intervention.

### 1. Honorary acceptance.

Art. 56. If a bill protested for non-acceptance bears an emergency address for the place of payment, acceptance must be demanded from the emergency address before security can be demanded. Among several

emergency addresses, preference shall be given to the one by the payment of which most of the obligors are released.

Art. 57. The holder need not permit the acceptance of honours from a person not named on the bill as an address of necessity.

Art. 58. The honorary acceptor must hand over the protest for lack of acceptance against reimbursement of the costs and have the acceptance of honour noted in an appendix thereto. He must notify the honorary acceptor of the intervention by sending the protest and post this notification together with the protest within two days of the day on which the protest was lodged. If he fails to do so, he shall be liable for the damage caused by the omission.

Art. 59. If the honorary acceptor has omitted to state in his acceptance in whose honour the acceptance is made, the drawer shall be deemed to be the honouree.

Art. 60. The honorary acceptor shall be bound by the acceptance of a bill of exchange to all of the honorary acceptor's successors. This obligation expires if the bill of exchange is not presented to the honorary acceptor for payment on the second working day after the date of payment at the latest.

Art. 61. If the bill of exchange is accepted in honour of an emergency address or another intervener, the holder and the successors of the honouree have no recourse to security. However, the same may be asserted by the honouree and his predecessors.

## 2. Honorary payment.

Art. 62. If the bill of exchange not honoured by the drawee, or the copy thereof, bears an emergency address or an honorary acceptance made out to the place of payment, the holder must present the bill to all emergency addresses and to the honorary acceptor for payment not later than the second working day after the day of payment, and have the success thereof noted in the protest for non-payment or in an appendix thereto. If he fails to do so, he loses the right of recourse against the addressee or honorary acceptor and their successors. If the proprietor rejects the honorary payment offered by another intervener, he loses the right of recourse against the fee-payer's descendants.

Art. 63. The bill of exchange and the protest must be handed over to the honorary payer against reimbursement of the costs. By making the payment

on account of honour, he enters into the rights of the holder (Art. 50. and 52.) against the honouree, his predecessors and the acceptor.

Art. 64. Among several persons who offer to make honourable payment, preference shall be given to the one by whose payment the greatest number of persons liable on a bill of exchange are released. An intervener who pays, although it is evident from the bill or protest that another, whom he ought to have followed, was willing to honour the bill, has no recourse against those endorsers who would have been released by making the payment offered by the other.

Art. 65. The honorary acceptor who does not receive payment because the drawee or another intervener has paid is entitled to demand a commission of one percent from the payer.

## X. Duplication of a bill of exchange.

### 1. Exchange duplicates.

Art. 66. The drawer of a drawn bill of exchange is obliged to deliver to the remitter on request several identical copies of the bill of exchange. These must be designated in the counterpart as *prima*, *secunda*, *tertia*, etc., otherwise each copy is deemed to be a separate bill (*sola bill*). An endorser may also demand a duplicate of the bill of exchange. To do so, he must contact his immediate foreman, who must return to his foreman until the request reaches the drawer. Any endorser may require his foreman to repeat the previous endorsements on the promissory note.

Art. 67. If one of the several executed deeds is paid, the others shall thereby lose their force. However, the remaining warrants shall remain in force:

1) the endorser who has endorsed several endorsements of the same bill of exchange to different persons, and all subsequent endorsers whose signatures are on the endorsements not returned at the time of payment;

2) the acceptor, who has accepted several acceptances of the same bill of exchange, from the acceptances on the acceptances not returned at the time of payment.

Art. 68. A person who has sent one of several copies of a bill of exchange for acceptance must note on the other copies with whom the copy he has sent for acceptance is to be found. However, the omission of this remark does not deprive the bill of exchange of its effect. The depositary of the specimen sent for acceptance is obliged to deliver it to the person who legitimizes himself as endorser (Art. 36.) or in some other way to receive it.

Art. 69. The holder of a duplicate, on which it is stated with whom the copy sent for acceptance is situated, may not, in default of payment of the same, take recourse to security, nor, in default of payment, recourse to payment, until he has had it established by protest:

- 1) that the copy sent for acceptance has not been delivered to him by the depositary, and
- 2) that acceptance or payment could not be obtained on the duplicate either.

## 2. Removable copies.

Art. 70. Copies of bills of exchange must contain a copy of the bill of exchange and the endorsements and notes on it and must bear the statement: "Copy to this point" or a similar designation. The copy must state with whom the original of the bill of exchange sent for acceptance is to be found. The omission of this note does not, however, deprive the endorsed copy of its bill of exchange force.

Art. 71. Any original endorsement on a copy shall be as binding on the endorser as if it were on an original bill.

Art. 72. The depositary of the original bill of exchange is obliged to deliver it to the holder of a copy bearing one or more original endorsements, provided that the latter is authorized to receive it as endorser or in some other way. If the original bill of exchange is not delivered by the depositary, the holder of the copy of the bill of exchange is only entitled to take recourse for security after recording the protest mentioned in Art. 69. no. 1. and after the expiry date stated in the copy to take recourse for payment against those endorsers whose original endorsements are on the copy.

## XI. Lost bills of exchange.

Art. 73. The owner of a lost bill of exchange may apply to the court of the place of payment for the amortization of the bill of exchange. After the commencement of the amortization proceedings, he may demand payment from the acceptor if he provides security until the bill is amortized. Without such security, he is only entitled to demand the deposit of the amount due under the acceptance with the court or with another authority or institution authorized to accept deposits.

Art. 74. The holder of a bill of exchange legitimized under the provisions of Art. 36. may be required to surrender it only if he has acquired the bill of exchange in bad faith or if he is guilty of gross negligence in acquiring it.

## XII. Wrong bills of exchange.

Art. 75. Even if the signature of the drawer of a bill of exchange is false or forged, the authentic acceptance and the authentic endorsement retain their effect as a bill of exchange.

Art. 76. All endorsers and the drawer whose signatures are genuine shall remain bound by a bill of exchange bearing a false or forged acceptance or endorsement.

## XIII Limitation of bills of exchange.

Art. 77. The claim against the acceptor under a bill of exchange shall become time-barred three years after the date of maturity of the bill.

Art. 78. The holder's rights of recourse (Art. 50.) against the issuer and the other foremen are time-barred:

1) in three months if the bill was payable in Europe, with the exception of Iceland and the Faroe Islands;

2) in 6 months, if the bill of exchange was payable in the coastal countries of Asia and Africa along the Mediterranean and Black Sea, or in the islands belonging to these seas;

3) in 18 months if the bill of exchange was payable in another non-European country or in Iceland or the Faroe Islands. The limitation period begins to run against the holder on the date of the protest.

Art. 79. The rights of recourse of the endorser (Art. 51.) against the drawer and the other principals are time-barred:

1) in 3 months, if the recipient lives in Europe, with the exception of Iceland and the Faroe Islands;

2) in 6 months, if the recipient lives in the coastal countries of Asia and Africa along the Mediterranean and Black Sea, or in the islands belonging to these seas;

3) in 18 months if the policyholder lives in another non-European country or in Iceland or the Faroe Islands.

If the endorser has paid before an action on a bill of exchange has been brought against him, the time limit runs from the date of payment, but in all other cases from the date on which the action or summons is handed over to him.

Art. 80. The limitation period (Arts. 77-79) is interrupted only by the filing of the action and only in relation to the party against whom the action is brought. In this respect, however, the notice of action given by the defendant takes the place of the action.

#### XIV Right of action of the bill creditor.

Art. 81. The obligation under a bill of exchange is incumbent on the drawer, acceptor and endorser of the bill, as well as on anyone who has co-signed the bill, the copy of the bill, the acceptance or the endorsement, even if he has named himself only as guarantor (per aval). The obligation of these persons extends to everything that the holder of the bill of exchange has to claim due to non-fulfillment of the bill of exchange obligation. The holder of the bill of exchange can claim his entire debt from the individual; it is up to him to decide which party obliged by the bill of exchange he wishes to claim against first.

Art. 82. The debtor may only avail himself of such defences as arise from the bill of exchange itself or to which he is directly entitled against the claimant.

Art. 83. If the obligation of the drawer or the acceptor under a bill of exchange is extinguished by lapse of time or by failure to perform the acts

prescribed by law for the preservation of the right to the bill, they remain liable to the holder of the bill only to the extent that they would enrich themselves to the detriment of the latter. There shall be no such claim against endorsers whose liability under the bill of exchange has lapsed.

## XV Foreign legislation.

Art. 84. The capacity of a foreigner to assume obligations on bills of exchange shall be judged according to the laws of the country to which he belongs. However, a foreigner who is not capable of accepting bills of exchange under the laws of his own country shall be bound by the assumption of obligations on bills of exchange in his own country, provided he is capable of accepting bills of exchange under the laws of his own country.

Art. 85. The essential requirements of a bill of exchange issued abroad, as well as of any other declaration of a bill of exchange issued abroad, shall be judged according to the law of the place where the declaration was made. If, however, declarations of bills of exchange made abroad meet the requirements of domestic law, the fact that they are defective under foreign law cannot be taken as an objection to the legal validity of the declarations subsequently made on the bill of exchange in the home country. Similarly, declarations on bills of exchange by which a resident commits himself to another resident abroad have the force of a bill of exchange even if they only comply with the requirements of domestic law.

Art. 86. The form of the acts to be performed with a bill of exchange in a foreign place in order to exercise or preserve the right of exchange shall be determined by the law in force there.

## XVI Protest.

Art. 87. Every protest must be recorded by a notary or a court official. It is not necessary to call witnesses or a recorder.

Art. 88. The protest must contain:

1) a verbatim copy of the bill of exchange or copy and all endorsements and remarks thereon;



2) the name or company name of the persons for whom and against whom the protest is lodged;

3) the request made to the person against whom the protest is made, his reply or the remark that he did not give one or was not to be found;

4) the indication of the place, as well as the calendar day, month and year on which the request (No. 3.) was made or attempted without success;

5) in the case of an acceptance of honor or an honorary payment, mention by whom, for whom and how it is offered and made;

6) the signature of the notary or the court official who recorded the protest, together with the official seal.

Art. 89. If performance under the law of bills of exchange must be demanded by several persons, only one protest document is required for the multiple demand.

Art. 90. Notaries and court officials are obliged to enter the protests they record in a special register according to their entire content, day by day and in date order, which is provided with consecutive numbers from sheet to sheet.

## XVII Place and time for the presentation and other actions occurring in the exchange traffic.

Art. 91. The presentation for acceptance or payment, the protest, the demand for a duplicate of a bill of exchange, and all other acts to be performed on the premises of a particular person must be performed at his place of business or, in the absence thereof, at his residence. At another location, e.g. at the stock exchange, this can only be done by mutual agreement. The fact that the business premises or the residence cannot be determined is only to be assumed as established if an inquiry made by the notary or the court official in this regard with the local police authority has remained fruitless, which must be noted in the protest.

Art. 92. If the bill of exchange expires on a Sunday or a public holiday, the next working day shall be the day of payment. The surrender of a duplicate bill of exchange, the declaration of acceptance and any other act may also only be demanded on a working day. If the time at which the

performance of one of the above acts had to be demanded at the latest falls on a Sunday or a public holiday, this act must be demanded on the next working day. The same provision also applies to the filing of a protest.

Art. 93. If there are general payment days (cash days) at a place of exchange, the payment of a bill of exchange which has fallen due between the payment days need not be made until the next payment day, unless the bill of exchange is payable on sight. However, the period specified in Art. 41. for taking up a protest for lack of payment may not be exceeded.

### XVIII. Defective signatures.

Art. 94. Declarations of exchange which are executed with crosses or other symbols instead of the name only have the force of an exchange if these symbols have been certified by a court or notary.

Art. 95. Anyone who signs a declaration of a bill of exchange as the authorized representative of another without having power of attorney to do so is personally liable in the same way as the alleged grantor of power would have been liable if the power of attorney had been granted. The same applies to guardians and other representatives who issue bills of exchange in excess of their authority.

### Third section. - From own bills of exchange.

Art. 96. The essential requirements of a separate (dry) bill of exchange are:

1) the designation to be included in the bill of exchange itself as a bill of exchange, or, if the bill of exchange is issued in a foreign language, an expression corresponding to that designation in the foreign language;

2) the amount of money to be paid;

3) the name of the person or company to whom or to whose order the issuer wishes to make payment;

4) the determination of the time at which payment is to be made (Art. 4. No. 4.);

5) the signature of the issuer with his name or company name;

6) the place, day of the month and year of the exhibition.

Art. 97. The place of issue is deemed to be both the place of payment and the place of residence of the drawer for his own bill of exchange, unless a specific place of payment is indicated.

Art. 98. The following provisions contained in this Act for bills of exchange drawn shall also apply to promissory notes:

1) Art. 5. and 7. on the form of the bill of exchange;

2) Art. 9 -17. on the endorsement;

3) Art. 19. and 20. on the presentation of bills of exchange at a time at sight with the proviso that the presentation must be made to the drawer;

4) Art. 29. on the security recourse with the proviso that it shall take place in the event of the issuer's insecurity;

5) Articles 30 - 40. on payment and the power to deposit the amount due on a bill of exchange, with the proviso that the latter may be effected by the drawer;

6) Articles 41. and 42., as well as Articles 45-55 on recourse for non-payment against endorsers;

7) Art. 62 - 65. on the payment of honour;

8) Art. 70 - 72. on copies;

9) Art. 73 - 76. on lost and false bills of exchange, with the proviso that in the case of Art. 73. payment must be made by the drawer;

10) Articles 78 - 96. on the general principles of the limitation period for bills of exchange, the limitation period for recourse claims against endorsers, the creditor's right of action, foreign bill of exchange laws, protest, the place and time for presentation and other acts occurring in bill of exchange transactions, and defective signatures.

Art. 99. Bills of exchange domiciled in one's own name must be presented for payment to the domiciliary or, if no such domiciliary is named,

to the drawer himself at the place where the bill of exchange is domiciled and, if payment is not made, protested there. If the protest is not lodged with the domiciliary in due time, the claim under the bill against the drawer and the endorsers is forfeited.

Art. 100. The claim under a bill of exchange against the drawer of a promissory note expires three years after the date of maturity of the note.

## **5. Ordinance concerning the establishment of trade offices and various amendments to the general trade regulations. From February 9, 1849. \*)**

The two ordinances of February 9, 1849., on the introduction of trade councils and trade courts, are of the greatest importance for the trade system of the Prussian state. Whereas Prussia used to have the strictest guild and guild compulsion, the more recent legislation of 1816. and subsequent years introduced unrestricted freedom of trade. The resulting free competition brought about many benefits, but also many inconveniences, and these inconveniences were believed to have been remedied by the two ordinances of February 9. The intention is to strike a balance between coercion and unconditional freedom of trade. Each individual trade should administer itself through representatives of all interested parties, and it should determine the limits of its expansion itself. In particular, completely free competition has now been abolished, in that no one may carry on a trade unless he has been formally examined by a commission of experts.

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree on the basis of Article 105. of the Constitutional Charter, at the request of Our Ministry of State, the following:

### **I. Construction of commercial premises.**

§. 1. For every place or district where there is a need for a trade council on account of considerable commercial traffic, such a council shall be established with the approval of the Ministry of Trade, Commerce and Public Works at the request of tradesmen, after consultation with the trade and commercial corporations and the municipal representatives.

§. 2. The Trade Council shall safeguard the general interests of the craft and factory business in its district and shall advise on and suggest suitable facilities to promote the same.

In addition to the cases in which its hearing is specifically prescribed (§§. 26. 27. 29. 30. 34. 67. 70.), the trade council shall also be heard with its opinions and proposals in all matters involving orders which interfere with the conditions of the craft and factory business. This applies in particular to the establishment of new and the dissolution or unification of existing guilds and journeymen's associations, as well as to the provisions to be laid down by local statutes on the basis of SS. 168. 169. of the Industrial Code and §§. 45. 56. 57. 58. of the present ordinance.

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\*) Revised and approved by the Chambers in accordance with the State Ministerial Announcement of January 30, 1850.

The trade council shall furthermore supervise compliance with the regulations on the guild system, on the examinations of masters and journeymen, on the acceptance and treatment of journeymen, assistants, apprentices and factory workers, on the established delimitation of work powers and on other commercial conditions. The same is authorized to bring his observations on the aforementioned matters to the attention of the authorities, and he is obliged to provide information and expert opinions at their request.

In the matters specified in §§. 28. 35. 36. 47. 49. the Trade Council shall be entitled to decide, with the exclusion of legal recourse, but subject to appeal to the Government.

§. 3. The members of the Trade Council shall be elected in equal numbers from the craftsmen's class, from the factory class and from the trade class of its district.

According to the three classes of members mentioned above, the Trade Council is divided into three sections.

However, insofar as the commercial circumstances of the locality or district necessitate a different composition and division of the trade council, the Ministry of Trade, Commerce and Public Works shall reserve the right to issue the corresponding orders. (§. 1.)

§. 4. The number of members of each division shall be an odd number and shall be fixed at a minimum of five,

§. 5. The employers (master craftsmen, factory owners) and the employees (journeymen, assistants, foremen, factory workers) shall have equal representation in the craft and factory sections of the Trade Council, provided, however, that the member required to obtain the odd number of members in each section shall be elected from the employers.

§. 6. An alternate shall be elected for each member from the class to which he belongs, who, if the member resigns before the expiry of his term of office or is temporarily prevented from exercising his office, shall take his place for the remainder of the term of office or for the duration of the prevention. If a deputy is prevented from exercising the office, one of the other deputies, initially from the same class, shall be appointed by the chairman of the division (§. 19.).

§. 7. All employers and employees belonging to the craft and factory sector and all self-employed tradesmen who have reached the age of twenty-four and have lived or worked in the district of the Trade Council for at least six months are entitled to participate in the election of members and deputies, with the exception of those:

- 1) who are not in full enjoyment of civil rights,
- 2) which are in bankruptcy or have declared themselves insolvent,
- 3) who are excluded from membership by a resolution of the commercial corporation or the Chamber of Commerce,
- 4) who have lost their commercial rights as a result of a final judgment,
- 5) who have been penalized for paying factory workers with goods (§§. 50. to 52).

§. 8. All persons entitled to vote who have reached the age of thirty and have been practicing their trade for five years are eligible to vote.

Persons who are related by blood or marriage within the second degree of kinship or who are partners in the same trade, factory or craft business may not be members of the trade council at the same time.

§. 9. The members of each division of the Trade Council shall be elected for four years by the class to which they belong.

For the craft and factory sections, members are elected in special election meetings of employers and employees. If the employees entitled to vote do not believe that they can find a sufficient number of qualified members in their class who meet the legal requirements for eligibility, they are authorized to elect their representatives from the employers.

§. 10. The Government shall appoint a commissioner to manage the elections or, if it is necessary to form several electoral districts, several commissioners.

Each commissioner shall call those entitled to vote to the election meeting by means of an announcement to be issued fourteen days before the scheduled election date.

§. 11. In each municipality of the electoral district, the local authority shall draw up a list of eligible voters residing in the locality and keep it up to date, taking into account those leaving and those entering. If an election is to be held, the register shall be made available for inspection by tradesmen for eight days immediately after the date of the election has been announced. During this period, those entitled to vote who have been omitted from the register may apply to have their names entered subsequently. The local authority shall decide on the admissibility of such an application, subject to appeal to the government. The lodging of an appeal shall not delay the establishment of the register, which shall be closed after the expiry of the aforementioned eight-day period and delivered to the commissioner.

§. 12. Only those eligible voters registered in the lists of the local authorities are admitted to the election meetings. Absentees may not make use of their voting rights.

After opening the election meeting, the commissioner appoints two vote collectors and a secretary. The election is carried out by ballot paper according to an absolute majority of votes. If no absolute majority is obtained in a vote, the two candidates who have received the most votes shall be shortlisted. In the event of a tie, the election shall be decided by lot.

The election protocol shall be signed by the commissioners, the vote collectors and the secretary and submitted to the government, which shall confirm the elections if they have been conducted in accordance with the regulations and the conditions of eligibility (§. 8.) have been met. A new election meeting shall be convened for those elections for which

confirmation is refused. The Ministry of Trade, Industry and Public Works shall decide on complaints against the orders of the government.

§. 13. The members and deputies appointed at the meeting of the Trade Council shall be sworn in and introduced by a government commissioner with a handshake.

Members retire at the end of the second year:

a) half of the members elected from the trade and factory sections of the trade council and the same number of members from the employers' class;

b) the smaller half of the members from the section of traders. Among the members belonging to the same class, those who resign first shall be determined by lot. With each resigning member, his deputy shall also resign.

§. 14. Before the members and deputies referred to in §. 13. retire and subsequently every two years before the retirement of those whose four-year term of office expires, the elections required to fill their positions, in which the retiring members may be re-elected, shall be held and examined. Once these elections have been confirmed, the elected members shall be sworn in and inducted by the Chairman of the Trade Council.

§. 15. The members of the trade council shall administer their office free of charge. Their suspension from office and removal from the same shall be effected in those cases in which such suspension takes place in the case of municipal officials, in accordance with the procedure prescribed for the suspension and removal from office of the latter.

In addition, suspension and removal from office shall take effect if a member of the Trade Council or a deputy loses the ability to participate in the election of members for one of the reasons mentioned in §. 7. In the aforementioned cases, the chairman of the trade council is authorized to temporarily prohibit the person concerned from exercising his office, but he must immediately report this to the government, which must confirm or revoke the suspension.

§. 16. Matters belonging to the scope of business of the Board of Trade shall be discussed in joint meetings of all or the divisions concerned if they affect the interests of the various divisions. In other cases, the business of the individual divisions shall be dealt with in separate meetings.



§. 17. The presence of at least three members is required for the resolutions of the Trade Council to be valid. If several divisions meet for joint meetings, the presence of at least three members of each division is required.

Resolutions are passed by a simple majority of votes. In the event of a tie, the Chairman has the casting vote.

§. 18. The order of the meetings and the management of the Trade Council and its departments shall be determined by regulations to be drafted by the Trade Council and submitted to the Government for approval.

§. 19. The members of each division shall elect from among themselves, by an absolute majority of votes, a chairman and, for his management in cases of prevention, a deputy for a term of two years. In the same way, the full members of the trade council shall elect from among themselves the chairman of the trade council and a deputy chairman to manage the council in cases where they are unable to do so. The names of those elected shall be notified to the government. At the renewal of these elections, which shall take place every two years after the trade council has been renewed, the previously elected members shall be eligible for re-election, provided they are still members of the trade council.

§. 20. The Trade Council shall elect a secretary and a messenger by an absolute majority of votes, who shall be appointed by the chairman. The salaries to be paid to them shall be proposed by the trade council and determined by the government.

§. 21. The procurement and maintenance of the business premises necessary for the trade council shall be the responsibility of the municipalities for whose district the trade council is established; these shall also bear the costs of the initial establishment. Where state buildings provide dispensable premises suitable for the trade council, these will be transferred to the trade council. The costs for the ongoing management, including the salary of the secretary and the messenger, shall be covered by contributions from the tradesmen of the district. The necessary contributions are to be announced by the trade council, with the approval of the government, according to the distribution principles determined by the latter. If necessary, they shall be collected by administrative order.

§. 22. In those places for which there is no trade council, the matters assigned to it shall be dealt with by the local authority.

## II. Craft business.

§. 23. From now on, the craftsmen named below are only permitted to start their own independent business if they have either been admitted to a guild after first proving that they are qualified to operate their trade, or if they have provided special proof of this qualification to an examination board for their trade. These craftsmen are:

Millers, bakers, gingerbread makers and confectioners, butchers, tanners of all kinds, leather makers, cordwainers, parchment makers, shoe and slipper makers, glove makers and bag makers, furriers, saddlers, including belt makers and bag makers, upholsterers, bookbinders, sellers and hoop beaters, brush makers, wig makers, hat makers, cloth makers and cloth makers, weavers and weavers of all kinds, trimmings makers and button makers, tailors, carpenters and chair makers, wheelwrights and wheelwrights, large and small boatmen, wood turners of all kinds, comb makers, basket weavers, potters, glaziers, blacksmiths of all kinds, cutlers, nail smiths, coppersmiths, gunsmiths, sporters, locksmiths, file-cutters, needlers and sieve-makers, plumbers, sword-sweepers, belt-makers, yellow and red foundrymen, bell-founders, pewterers, gold and silver workers, gold and silver beaters, watchmakers, gilders, painters and lacquerers, dyers, soap boilers.

§ 24. Bricklayers, stonemasons, slate and brick layers, house and ship carpenters, mills and well builders and chimney sweeps must prove their ability to work independently in their trade by means of the government certificate prescribed in §. 45. of the General Trade Regulations of January 17, 1845. Otherwise, the provisions of the present ordinance shall apply to their commercial circumstances.

§. 25. Master builders are not authorized, in the management of construction companies, to have the work of those trades for which they do not possess the certificate of competence from the government or have not provided the proof of competence prescribed in Section 23 carried out without the involvement of certified master craftsmen.

§. 26. Insofar as other designations are customary in individual places or districts for the trades mentioned in §. 23, or certain work of these trades constitutes the exclusive employment of special classes of craftsmen, the

government may, after hearing the trade council, order special proof of qualification for the same.

The Ministry of Trade, Commerce and Public Works is authorized to prescribe this proof for trades other than those mentioned in §. 23, depending on local circumstances and after consulting the trade council. trades or to issue regulations for individual trades.

§. 27. The Ministry of Trade, Commerce and Public Works shall have the power to exempt persons whose qualification for the intended commercial enterprise is otherwise established from the examination prescribed in Section 23 or ordered in accordance with Section 26 for the authorization to engage in independent commercial enterprise in special exceptional cases, after hearing the trade council.

§. 28. The trade council shall decide which work falls under the individual trades (Sections 23 24. 26.), taking into account the regulations issued by the government or the Ministry of Trade, Commerce and Public Works regarding their delimitation, according to the circumstances of the local trade.

§. 29. The simultaneous exercise of several trades by the same person may, after consultation with the guilds involved and the trade council, be restricted by local statutes (Section 168 of the Industrial Code) in accordance with local conditions if this causes considerable disadvantages.

§. 30. The provisions of §. 23. shall not apply to the operation of factories or to the manufacture of products whose production belongs to the secondary occupations of the rural population of the area or is effected by day labour. The government reserves the right to make more detailed determinations in this regard due to local circumstances after consulting the trade council and the local authority.

§. 31. Factory owners are only permitted to employ journeymen to the extent that they require them for the direct production and finishing of their products, as well as for the manufacture and maintenance of their tools and equipment.

§. 32. Factory owners who operate a trade subject to the provisions of SS. 23. and 26. of this ordinance without having proven their ability to operate it as a trade (p. 30.) may not employ journeymen or assistants outside their factory premises.

§. 33. Owners of warehouses for the retail sale of handcrafted goods may not engage in their manufacture if they have not passed the master craftsman's examination required to operate the craft in question.

Excluded from this are those who, prior to the promulgation of the present ordinance, have made the proper notification to the local authority regarding the commercial production of such goods.

§. 34. Where the keeping of warehouses for the retail sale of craftsmen's wares causes considerable disadvantages for the commercial conditions of the locality, it may be determined by local statutes for certain kinds of craftsmen's wares that the establishment of such warehouses is only permitted to those who are not authorized to carry on the crafts concerned independently with the permission of the local authority, which is then only to be granted after prior consultation with the guilds concerned and the trade council.

### III. Examinations of the craftsmen.

§. 35. Admission to the master craftsman examinations to be taken in accordance with SS. 23. 24. 26. is henceforth subject to the following conditions:

1) The person to be examined must have reached the age of twenty-four; for special reasons, however, the trade council may permit the examination of a journeyman after he has reached the age of twenty-one.

2) The person to be examined must have learned his trade as an apprentice (p. 44.) with an independent tradesman and have passed the journeyman's examination (p. 36.).

3) A period of at least three years must have elapsed since the dismissal from the apprenticeship; in exceptional cases, however, the trade council may permit the examination after the expiry of one year if the journeyman has had the opportunity to acquire the knowledge and skills required for the intended trade by attending a commercial training institute or otherwise.

Anyone who has satisfied the requirements under 2. and 3. in a previous examination may take the examination for the operation of another trade

without prior proof of having completed an apprenticeship and journeyman's period for this second trade.

For persons who are employed as journeymen or assistants at the time of promulgation of the present ordinance, proof of three years' employment in the relevant trade is sufficient.

§. 36. The examination of an apprentice on the knowledge and skills necessary for a journeyman is not permitted before the expiry of a three-year period after acceptance into the apprenticeship.

Exceptionally, with the consent of the master, this may be permitted by the trade council after the expiry of a one-year apprenticeship period if the apprentice has reached the age of twenty or has had the opportunity to acquire the knowledge and skills necessary for a journeyman in less than three years by attending a trade school or otherwise.

§. 37. The master craftsman and journeyman examinations (§§. 35. 36.) are conducted at each guild by a commission consisting of a member of the local authority as chairman, two master craftsmen elected by the guild and two journeymen elected by the journeymen of the craft. Each year, one master craftsman and one journeyman retire from this commission, but are eligible for re-election.

§. 38. Anyone who is rejected by the examination commission of a guild as unqualified may appeal against this to the district examination commission of the same craft. This appeal must be lodged with the commission which issued the rejection decision within fourteen days of the date of service of the decision.

§. 39. For each craft (§. 23.) the government shall appoint one or more district examination commissions in the individual districts according to local and industrial conditions. Each of these shall be formed under the chairmanship of a commissioner appointed by the government, consisting of two masters and two journeymen. For this purpose, the guild or, where there is no guild, the master craftsmen in each town of the examination district elect two to four master craftsmen each year, and the journeymen in the same way elect two to four journeymen, from which the chairman selects the members of the commission to be included in the examination in each individual case.

§. 40. Tradespeople who do not wish to join a guild can take the examination at the district examination commission. Similarly, apprentices who are not admitted to a guild may pass the journeyman's examination at the district examination commission. The decision of the district examination board may be appealed to a neighbouring district examination board, the choice of which is at the discretion of the appellant. The appeal must be lodged within fourteen days with the commission before which the examination took place.

§. 41. Anyone who has not registered an appeal (§§. 38. 40.) in good time may only be admitted to take a new examination after six months. If the candidate has failed only one part of the examination, the new examination shall be limited to this part, both when the appeal is settled and when the examination is retaken at a later date.

§. 42. The person to be examined must show that he is able to carry out the usual work of his trade independently or, if it is an examination of an apprentice, as a journeyman.

The Ministry of Trade, Industry and Public Works reserves the right to make more detailed provisions regarding the examination tasks and the form of the examination and discharge certificates.

§. 43. The examination certificates of the examination commissions mentioned in §§. 37. 39. shall be considered everywhere as sufficient proof of industrial qualification both for admission to a guild and for the authorization to operate the craft independently. The same applies with regard to the certificates of competence required by the government in §. 45. of the Industrial Code.

A retake of the passed examination cannot be requested even if the candidate changes his or her place of residence.

#### IV. Conditions of apprentices, journeymen, assistants and factory workers.

§. 44. Anyone who enters into employment with a master to learn a trade is to be regarded as an apprentice, regardless of whether the learning takes place in return for an apprenticeship fee or unpaid assistance, or whether wages are paid for the work.

§. 45. Local statutes may provide that the admission and dismissal of all apprentices for whose trade a guild exists or is established in the locality shall take place before this guild; likewise, the guild may be ordered to participate appropriately in the supervision of the training and conduct of those apprentices whose masters do not belong to the guild.

§. 46. Before the regulations on the conditions of journeymen and assistants to be included in local by-laws are adopted, representatives of the same (former journeymen) shall be heard with their comments.

Guild matters that affect the interests of journeymen and assistants must first be discussed by the guild board together with representatives of the journeymen for the purpose of mediation.

§. 47. Master craftsmen (§§. 23. 24. 26.) may only use journeymen, assistants and apprentices in their trade for the technical work of their trade, unless an exception is permitted by the trade council. The employment of women is not subject to any restriction.

§. 48. Journeymen and assistants may only work in their trade for masters of their craft, unless exceptions are made in accordance with §§. 31. 76.

§. 49. The daily working hours of journeymen, assistants, apprentices and factory workers shall be determined by the trade council for the individual trades and factories after consultation with those concerned.

Nobody is obliged to work on Sundays and public holidays, unless otherwise agreed in urgent cases.

§. 50. Factory owners, as well as all those who trade in whole or semi-finished products, are obliged to pay cash compensation to the workers who are employed to manufacture the products for them.

You may not lend goods to them.

On the other hand, the workers can be provided with housing, heating requirements, land use, regular meals, medicines and medical assistance, as well as tools and materials for the products they are to manufacture, which are deducted from their wages.

§. 51. The provisions of Section 50 shall also apply to family members, assistants, agents, managing directors, factors and supervisors of the persons referred to therein, as well as to traders in who's business one of the aforementioned persons is directly or indirectly involved.

§. 52. Workers (§. 50.) are also understood here to be those who, outside the factory premises, manufacture the whole or semi-finished products necessary for the factory owners or for persons of equal status to them, or who supply such products to them without making a trade out of the sale of these goods to consumers.

§. 53. Workers whose claims, contrary to the provisions of §§. 50. to 52, are settled otherwise than by cash payment may at any time demand payment of their claims in cash.

§. 54. Contracts contrary to §§. 50. to 52 are null and void. The same applies to agreements between factory owners or persons assimilated to them on the one hand and workers on the other hand concerning the withdrawal of the needs of the latter from certain sales outlets, as well as generally concerning the use of their earnings for a purpose other than to participate in facilities to improve the situation of the workers or their families (§. 50.).

§. 55. Claims for goods which, notwithstanding the prohibition, have been credited to the workers may neither be sued for by factory owners nor by persons assimilated to them, nor may they be asserted by set-off or otherwise, irrespective of whether they have arisen directly between the parties concerned or have been acquired indirectly.

On the other hand, such claims shall fall to the sickness, death, savings or similar relief fund which exists in the municipality of residence of the worker concerned for the class of workers to which he belongs. If there are several such funds, the claim shall accrue to all of them in equal shares, but in the absence of such institutions to the local poor relief fund.

## V. Provident funds and similar institutions.

§. 56. Local by-laws may stipulate, with the consent of the guild, that all those who independently operate a trade in the municipal district for which a guild exists there are obliged to join the sickness, death and assistance funds of the guild members, as well as the widows' and orphans' support funds of the same.



In such cases, no distinction may be made between the guild members or their relatives and other interested parties with regard to the contributions and other payments to the aforementioned funds and the support to be granted therefrom. Those involved who do not belong to the guilds must also be ensured, through statutory regulations for the individual fund associations, participation in the fund administration and in the consultations on joint fund matters in accordance with their circumstances, and must be given the opportunity to take note of the results of the fund administration in the same way as the guild members.

§. 57. Local by-laws may stipulate that all those who independently carry on the same or related trades in the locality shall be obliged to carry such equipment which

1) the accommodation or support of journeymen or assistants who are looking for work, ill or in need of help for other reasons, or

2) the further training of apprentices, journeymen or assistants to meet under the conditions to be determined by the local authority with the approval of the government and to pay contributions from their own funds. These contributions shall be assessed on the same basis for all participants.

The total contribution of the self-employed tradesmen to the costs of the facilities mentioned under 1. may not exceed half of the amount paid by the co-participating journeymen and assistants.

The local statutes may also impose on self-employed tradesmen the obligation to advance the contributions of their journeymen and assistants to the above-mentioned facilities, subject to offsetting against the next wage payment.

§. 58. The provisions of §. 169. of the Industrial Code on the regulation of the relationship between self-employed tradesmen and their journeymen and apprentices, and on the obligation of journeymen to contribute to the journeymen's funds, also apply to factory workers.

In addition, local statutes may stipulate the obligation of factory owners to contribute to the factory workers' provident funds from their own funds up to half of the amount paid by the workers employed by them, and to advance the contributions of the latter, subject to deduction from the next wage payment.

In the statutes of the individual associations and coffee houses, which are to be approved by the government, the factory owners must be granted a share in the administration of the fund commensurate with their position as employers and the amount of their contributions.

§. 59. Old contributions of journeymen, assistants and factory workers to the mills and facilities mentioned in Sections 144 169. of the Industrial Code and in Sections 57 58. of the present Ordinance, as well as the contributions and advances to be paid by self-employed tradesmen and factory owners, may be collected from those obliged to pay by executive collection through administrative channels.

## VI Guild fees and levies

§. 60. The fees and charges that were previously

1) on the admission of new members to a guild by the admitted members and

2) were to be paid by the apprentices or by the masters to various employers and other persons entitled to levy when the apprentices were admitted and dismissed, are to be subject to immediate revision and, insofar as this has not already been done, are to be regulated in accordance with the following provisions.

§. 61. Charges to the guild treasury.

1) when admitting new members, the previous admission fees, insofar as they do not exceed the sum of 5 Thlr, shall continue to be charged until the older guild statutes have been revised (p. 66. of this ordinance), whereas

2) when admitting and dismissing apprentices, in addition to reimbursement of the costs specified in the

§. 159. of the Trade, Commerce and Industry Regulation Act (Trade Regulation Code), no fees or

other payments are collected.

§. 62. No fees or charges may be levied on either direct or indirect civil servants in the negotiations referred to in section 60.

§. 63. All payments and levies which were previously payable to the treasury or to a municipal or local poor relief fund in the cases referred to in Section 60 shall, insofar as their abolition has not already been effected by Article 40 of the Constitution, be hereby abolished, whereas the consideration to be granted in return shall cease to apply.

The same applies with regard to the payments and levies collected in those cases for other entitled persons (churches, charitable foundations, etc.), unless these entitled persons prove in accordance with §§. 64. 65. that their rights to levy are based on special onerous titles of acquisition.

§. 64. The application for recognition of a right to levy on the basis of a troublesome title (§. 63.) must be submitted to the government in writing by the end of the year 1849. If this is not done, the entitled person shall automatically forfeit his right to levy.

§. 65. The government shall have the application for recognition of the right to levy (Section 64) submitted in good time discussed by the local authority with the involvement of the entitled party and the guild concerned. After presentation of the concluded negotiations, the plenary session of the government shall decide by means of a resolution to be issued with reasons whether and up to what amount the entitled party is authorized to continue levying the tax.

Both the entitled party and the guild concerned may appeal against this ruling to the Ministry of Trade, Industry and Public Works or appeal for a hearing within a preclusive period of six weeks after service of the copy of the ruling.

If one party takes legal action, the appeal lodged by the other party shall also be settled by legal action.

§. 66. The statutes of the older guilds shall be revised and amended in accordance with this ordinance. The revised drafts must be submitted to the governments within three months for approval by the Ministry of Trade, Commerce and Public Works.

## VII General provisions.

§. 67. Foreigners shall only be admitted to the operation of a standing trade for substantial reasons, unless they are to be refused permission in general in response to the restrictions imposed on tradesmen in this country. For these reasons, the municipality of the place where the trade is to be operated, the guild involved and the trade council must be consulted at all times before a foreigner is licensed.

The same applies if naturalization (§. 8. of the law of 31 December 1842, Law Collections 1843. page 15.) is applied for by foreign traders.

The provisions of this paragraph shall apply to nationals of German states only as long as the reciprocal admission of tradesmen to establish residence and to engage in business is not regulated for the same on the basis of the same principles.

§. 68. The police permit to trade in used clothing or beds, used linen or old metal equipment, to engage in pawnbroking, to act as a commercial intermediary or to accept orders, in particular to draw up written orders for others, as well as to engage in the trade of wage earners and other persons who offer their services on public streets and squares or in public houses (Section 49 of the Gew.-Ordn.) shall be denied if the local authority to be consulted, after hearing the municipal representatives, does not recognize the usefulness and need of the intended commercial enterprise in the local circumstances.

§. 69. Public auctions of new handicraft goods may only be held with the special permission of the local authority of the place of auction, unless they are held by way of execution or by order of a court or other public authority.

§. 70. Where, according to the previous local custom, certain craftsmen's wares, which do not belong to the objects of the weekly market trade open to everyone (§. 78. of the Trade Regulations), could only be sold at the weekly market by residents of the market town, the government may, after hearing the trade council, allow the local sellers to continue the traditional weekly market trade with these craftsmen's wares without allowing foreign sellers of the same goods at the weekly market (§. 75. of the Trade Regulations).

§. 71. Facilities according to which the purchase of foodstuffs at weekly markets is not permitted to individual groups of buyers for the entire duration

of the market, but only for a certain period of time, may also be introduced in places where such facilities do not yet exist (Section 79 of the Gew.-Ordn.), subject to the approval of the government in accordance with local needs.

§. 72. The local police authorities are authorized to require bakers and sellers of baked goods to make the prices and weights of their various baked goods known to the public for certain periods of time to be determined by them by means of a notice visible from the outside of the sales premises.

This notice must be stamped with the police stamp free of charge and displayed daily during sales hours.

Violations of the above-mentioned tariffs are punished in accordance with §. 186. of the Trade Regulations.

§. 73. Where the sale of baked goods is only permitted according to tares determined by the police or posted by the bakers and vendors on their sales premises, the local police authorities may at the same time require the bakers and vendors to set up scales with the required weights in the sales premises and to permit the use of the same to reweigh the baked goods sold.

### VIII Penal provisions.

§. 74. Anyone who contravenes the prohibition provisions of §§. 23. 25. 31. 32. 33. 47. 69. or helps to circumvent them by lending his name shall be punished with a fine of up to two hundred thalers or imprisonment for up to three months. In the event of repetition, loss of the right to operate the trade independently may also be imposed.

The same penal provision shall apply to the violation of regulations made by the government or by the Ministry of Trade, Industry and Public Works pursuant to §. 26. or by local statutes pursuant to §§. 29. 34.

§. 75. Violations of Sections 50 to 52 shall be punished with a fine of up to five hundred thalers and, in the case of inability, with proportional imprisonment. In the event of a repeat offense, the penalty shall be doubled. The fines shall be paid to the fund to which the claims referred to in §. 55. accrue in accordance with the provisions laid down therein.

Every final conviction shall be published at the expense of the convicted person in the official gazette and other public newspapers of the districts in which the convicted person and the worker concerned are resident.

§. 76. The conditions of workshops and factories intended for the procurement of military requirements, military administration, work in public institutions and public buildings, including fortress construction yards, shall be subject to special regulation; the provisions of the present ordinance shall not apply to them.

§. 77. All general and special provisions contrary to the present ordinance are hereby repealed.

Authenticated under Our Royal Signature and Royal Seal.

Given Charlottenburg, February 9, 1849.

(L S.) Friedrich Wilhelm.

Gr. v. Brandenburg, v. Ladenberg. v. Manteuffel. v. Strotha.

Rintelen. v. d. Heydt. For the Minister of Finance: Kühne.  
Gr. v. Bülow.

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## **6. Ordinance on the Establishment of Industrial Courts. From February 9, 1849 \*)**

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree at the request of Our Ministry of State and on the basis of Art. 105. of the Constitutional Charter for the extent of Our Monarchy, with the exclusion of the district of the Court of Appeal at Cologne, for which a revision of the existing legislation is reserved, as follows:

First section. - Establishment and designation of commercial courts.

§. 1. For every place or district where there is a need for a trade court due to considerable commercial traffic, such a court shall be established upon

application by tradesmen, after hearing the trade and commercial corporations and the municipal representatives, and after obtaining Our special approval.

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\*) Revised and approved by the Chambers in accordance with the State Ministerial Announcement of January 20, 1850.

§. 2. The Commercial Court shall settle disputes between independent tradesmen and their journeymen, assistants and apprentices by amicable mediation, or if necessary by judgment, as well as disputes between those who have raw materials or semi-finished products processed into goods for trade (factory owners, factors, issuers, publishers), with the factory managers and factory workers employed by them, as well as their factory apprentices and factory assistants, insofar as the dispute relates to the commencement or termination of the employment or apprenticeship relationship, to mutual benefits during the term of the same, or to such claims arising from the employment or apprenticeship relationship.

Factory workers are not only those who are employed in the factory, but also those who process the raw materials or semi-finished products provided to them by factory owners, factors, issuers or publishers outside the factory with their own or third-party tools, with or without the use of additives, to produce goods for their business in return for payment.

§. 3. All persons specified in §. 2. are subject to the jurisdiction of the Commercial Court who:

- a) have a business or workshop within the judicial district, or
- b) exercise their trade as factors, issuers or publishers within the same district, or
- c) work for such establishments or workshops or for such factors, issuers or publishers, even if they reside outside the judicial district.

§. 4. The members of the Industrial Court shall be elected for four years from the class of self-employed craftsmen, factory owners, factors, issuers or publishers (employers), and from the class of journeymen, assistants, foremen and factory workers (employees), by the employers and employees residing in the judicial district.

Their number shall be fixed at five, nine, thirteen or seventeen according to the size and commercial circumstances of the judicial district.

In the first case, the industrial tribunal shall consist of three members from the employers' class and two members from the employees' class;

In the second case, five members from the employers' class and four members from the employees' class;

In the third case, seven members from the employers' class and six members from the employees' class;

In the fourth case, nine members from the employers' class and eight members from the employees' class.

It shall be left to the special ordinance on the establishment of the individual industrial tribunals to determine, according to local conditions, in what proportion the factory owners and self-employed craftsmen shall be represented within the class of employers and the assistants, journeymen and factory workers within the class of employees.

§. 5. An alternate shall be elected for each member from the class to which he belongs, who, if the member resigns before the expiry of his term of office or is temporarily prevented from exercising his office, shall take his place for the remainder of the term of office or for the duration of his incapacity. If a deputy is prevented from exercising the office, one of the other deputies, initially from the same class, shall be appointed by the chairman of the Industrial Court.

§. 6. All employers and employees who have reached the age of four and twenty and who have lived or worked in the district of the Industrial Court for at least six months are entitled to participate in the election of members and deputies, with the exception of those IUIH (4

1) who are not in full enjoyment of civil rights, 190

2) which are bankrupt or have declared themselves insolvent.

3) who are excluded from membership by a resolution of the commercial corporation or the Chamber of Commerce,



4) who have lost their commercial rights as a result of a final judgment,

5) who have been punished for paying factory workers with goods (§§. 50. and following of the ordinance of February 9, d. J.).

§. 7. All persons entitled to vote who have reached the age of thirty and have been practicing their trade for five years are eligible to vote.

Persons who are related by blood or marriage within the second degree of kinship or who are partners in the same trade, factory or craft business may not be members of the Commercial Court at the same time.

The members of the industrial tribunal for the employers' class are to be elected by the employers and the members for the employees' class are to be elected by the employees.

If the employees entitled to vote do not believe that there are a sufficient number of qualified members in their class who meet the conditions of eligibility, the employees shall be entitled to elect their representatives from the employers' class.

§. 8. The government shall appoint a commissioner or, if it is necessary to divide the judicial district into several electoral districts, several commissioners to conduct the elections.

Each commissioner shall call those entitled to vote to the election meeting by means of an announcement to be issued fourteen days before the scheduled election date.

§. 9. In each municipality of the electoral district, the local authority shall draw up a list of the persons entitled to vote residing in the locality and keep it up to date, taking into account those leaving and those entering. If an election is to be held, the register shall be made available for inspection by tradesmen for eight days immediately after the date of the election has been announced. During this period, those entitled to vote who have been omitted from the register may apply to have their names entered subsequently. The local authority shall decide on the admissibility of such an application, subject to appeal to the government. The lodging of an appeal shall not delay the establishment of the register, which shall be closed after the expiry of the aforementioned eight-day period and delivered to the commissioner.

§. 10. Only those registered in the lists of the local authorities (§. 9.) who are entitled to vote are admitted to the election meeting. Absentees may not make use of their voting rights.

After opening the election meeting, the commissioner appoints two vote collectors and a secretary. The election is carried out by ballot paper according to an absolute majority of votes. If no absolute majority is obtained in a vote, the two candidates who have received the most votes shall be shortlisted. In the event of a tie, the election shall be decided by lot.

The election protocol shall be signed by the commissioner, the vote collectors and the secretary and submitted to the government, which shall confirm the elections if they are conducted in accordance with the regulations and if the prescribed qualifications of those elected (p. 7) are beyond doubt. A new election meeting shall be convened for those elections for which confirmation is refused.

The Ministry of Trade, Industry and Public Works decides on complaints against government orders.

The meeting may not deal with matters that are not directly related to the election business.

§. 11. The members and deputies appointed when the Industrial Court is established shall be sworn in and introduced by a government commissioner.

Members retire at the end of the second year:

a) if the industrial tribunal has five members, one member from the class of employers and one member from the class of employees;

b) if the tribunal has nine members, two members from the class of Alan employers and two members from the class of employees;

c) if the industrial tribunal has thirteen members, three members from the class of employers and three members from the class of employees;

d) if the tribunal has seventeen members, four members from the class of employers and four members from the class of employees.

Among the members belonging to the same class, those who leave first are determined by lot.

Each departing member shall be replaced by a deputy.

§. 12. Prior to the retirement of the members and deputies specified in §. 11. and subsequently every two years, prior to the retirement of those whose four-year term of office expires, the elections required to fill their positions shall be held and examined in accordance with the provisions of §§. 8. 9. 10. Once these elections have been confirmed, the elected members shall be sworn in and introduced by the Chairman of the Industrial Court.

Retiring members may be re-elected, but they are not obliged to accept the election in the first two years.

§. 13. The members of the Industrial Tribunal shall perform their duties free of charge; however, members from the class of employees may be granted compensation to be determined in the regulations.

The suspension of members of the Industrial Court from office and their removal from office shall, in those cases in which it takes place in the case of other judicial officers, be effected in accordance with the procedure prescribed for their suspension and removal from office.

In addition, suspension and removal from office shall occur if a member of the Industrial Court or a deputy loses the ability to participate in the election of members for one of the reasons mentioned in §. 6. parts 1. 2. 3. 4. 5. In the aforementioned cases, the chairman of the industrial tribunal is authorized to temporarily prohibit the person concerned from exercising the office, but he must immediately report this to the district court of appeal, which must confirm or revoke the suspension.

§. 14. After the establishment of the industrial tribunal, the members shall elect a chairman from the class of employers by an absolute majority of votes, and a deputy chairman to manage the tribunal in cases where the chairman is prevented from doing so, for a term of two years. The names of those elected shall be notified to the government and the district court of appeal. At the renewal of that election, which shall take place from two to two years after each supplementation of the Industrial Court (§. 12.), those previously elected shall be eligible for re-election, provided they are still members of the Industrial Court.

§. 15. The Commercial Court shall elect by an absolute majority of votes a court clerk, who must have passed the clerk's examination, and a court

messenger, who shall also perform the duties of the executor. These elections are to be confirmed by the government if the elected persons are proven to be qualified. They shall be sworn in by the chairman of the commercial court. The salaries to be paid to them shall be proposed by the Commercial Court and determined by the Government.

§. 16. The procurement and maintenance of the business premises required for the Commercial Court shall be the responsibility of the municipalities for which the court is established; these shall also bear the costs of the initial establishment of the court. Where state buildings provide premises that are dispensable and suitable for the Commercial Court, these shall be transferred to the Commercial Court. The costs of running the court, including the salaries of the court clerk and the court messenger, shall be covered by the fees and fines received and, if these are insufficient, by contributions from the tradesmen in the court district. The necessary contributions shall be announced by the commercial court with the approval of the government in accordance with the distribution principles determined by the latter. If necessary, they shall be collected by administrative order.

## Second section. - Proceedings before the Settlement Committee.

§. 17. Any person who wishes to assert a claim before the Commercial Court shall file the same in writing or with the court clerk for the record, stating the name and place of residence of the person against whom the claim is asserted, the cause of action and the specific application to be made. The clerk of the court shall summon the defendant to appear before the settlement committee in writing, stating the plaintiff's particulars, and shall notify the claimant of the scheduled date.

§. 18. The Settlement Committee shall consist of two members of the Industrial Court, one of whom must belong to the class of employers and the other to the class of employees.

The clerk of the court shall record in a minute book the business transacted by the settlement committee with a brief statement of the matters in dispute. The minutes shall be signed by the two members of the committee and the court clerk at the end of each hearing.

§. 19. If the defendant summoned to appear before the settlement committee does not appear at the appointed time, his absence shall be noted in the record book and, at the request of the plaintiff, a summons to appear

before the Commercial Court shall be issued. If the applicant fails to appear, his application shall be deemed withdrawn.

§. 20. The committee shall, after hearing the parties present, make proposals for the amicable settlement of the dispute. It is left to the committee to take evidence for its own information in accordance with the evidence brought to the court; however, it is not authorized to examine witnesses or experts on oath or to impose oaths.

§. 21. If a settlement is reached on all or only part of the matter in dispute, it shall be recorded in the record book. The parties shall execute this note and receive a copy of the proceedings on request. A settlement concluded before the settlement committee may be enforced.

§. 22. If no agreement is reached, the fruitless failure of the settlement negotiations shall be recorded in the record book and, at the request of the plaintiff, the matter shall be referred immediately to the Commercial Court.

In this case, the parties may be summoned orally to the hearing of the case before the Commercial Court under the warning contained in §. 27. No. 4. and §. 28. No. 3. without the need for a written summons.

§. 23. If both parties appear before the committee without prior summons to mediate their dispute, a note shall be made in the record book on the subject matter of the dispute and the application and otherwise the procedure shall be in accordance with §§. 20. 21. 22.

§. 24. The costs of the proceedings before the settlement committee shall be borne equally by each of the two parties if a settlement is reached on the plaintiff's claim which does not settle the matter.

If a fine settlement is reached between the parties appearing before the settlement committee, the costs of the proceedings shall be borne by the party against whom the costs of the subsequent court proceedings are imposed by the commercial court.

If the referral of the action to the Commercial Court is not requested by the plaintiff, or if the plaintiff's request is to be considered withdrawn (§. 19.), the plaintiff shall bear the costs incurred.

§. 25. For disputes between guild members and their assistants, journeymen and apprentices, the settlement procedure before a settlement

committee of the guild shall replace the procedure mentioned in §. 17. and following.

Execution may be carried out on the basis of a settlement concluded before the settlement committee of the guild.

### Third section. - Proceedings before the Commercial Court.

§. 26. Disputes that come before the Commercial Court shall be heard by the court sitting in session.

The court clerk shall issue the summonses for these proceedings. The clerk shall keep a continuous record of the matters brought before the Commercial Court. Minutes of the hearing.

The minutes of the hearing are drawn up by the chairperson and the court clerk.

§. 27. The summons of the defendant to the statement of defence and to the further hearing must contain the following:

1) the exact designation of the legal claim, stating the name, place of residence and trade of both parties;

2) the transcript of the complaint and its enclosures;

3) the request to answer the complaint in full on the date and time specified in person or, in the event of absence or illness, by an authorized representative permitted in accordance with the provisions of §. 50. and provided with written power of attorney, to state the evidence intended to substantiate the objections and to bring the original or copies of the documents to be submitted;

4) the meaning that, if the above request is not complied with, at the request of the plaintiff who has appeared, the facts stated in the action will be deemed to have been admitted and the documents submitted by the plaintiff will be deemed to have been recognized, and what follows from this in terms of rights will be stipulated in the contumacious decision to be drawn up.

§. 28. The summons of the plaintiff must contain:

- 1) the notification of the scheduled appointment;
- 2) the request to appear at the appointed hour in person or, in the event of absence or illness, by an authorized representative permitted under §. 50. and provided with written power of attorney;
- 3) the meaning that if the plaintiff did not appear or his authorized representative did not comply with the provisions of §. 50, the files would be returned at his expense.

§. 29. The warnings issued in the summonses shall be followed if one or the other party fails to appear at the appointed time.

If the commercial court has knowledge from its own knowledge or through an introduction by the defendant's relatives, neighbours or friends that the defendant is prevented from appearing at the scheduled date due to absence, serious illness or other serious reasons, the court may refuse to issue the notice of account by order of the court and set a new date for the statement of defence.

If neither party appears, the files shall be returned at the expense of the plaintiff.

§. 30. If both parties have appeared, the defendant shall answer the complaint and raise his objections. After hearing the plaintiff on these objections, both parties shall make proposals for an amicable settlement of the dispute. If a settlement is reached, the hearing to be held shall be conducted by the parties involved. They shall receive copies of the proceedings on request.

§. 31. If it appears from the statements of the parties that the decision of the legal dispute depends on special commercial knowledge, the court shall be authorized to call in and hear other experts for its information, or to refer the parties to one of the members or to one of the deputies who appears suitable in view of his trade, in order to make settlement proposals to them and, if such proposals are not accepted, to make an expert report on the subject matter of the dispute.

§. 32. The court shall decide on the taking of evidence necessary to decide the case after the parties have been heard on any objections they may have to the proposed witnesses and other evidence. If the evidence is

available, the evidence may be taken immediately and the judgment pronounced.

In the opposite case, the parties, if they are present, shall be summoned orally, if they have already been released, in writing to the date at which the taking of evidence is to take place, with the warning that if they fail to appear at the scheduled date, the taking of evidence will proceed.

§. 33. The examination of witnesses shall be conducted by the presiding judge in front of the assembled commercial court.

The witnesses must state their name, profession or trade, age and place of residence and declare whether and to what extent they are related to the parties by blood or marriage and whether they have any employment or other close relationship with the parties.

When taking evidence, the presiding judge may also ask the witnesses suitable questions to clarify the facts other than those put forward as evidence.

The parties may not interrupt the witnesses. If the court does not consider their presence during the examination of witnesses to be appropriate, they must leave during the examination.

§. 34. In cases in which an appeal is admissible, the witness statement must be written down in full and read out to the witness being examined.

The witness shall sign the recorded hearing after it has been approved by him or corrected according to his subsequent recollections, or, if he is unable to write, he shall sign it and then swear to it before the assembled court.

In cases where an appeal is not admissible, it is sufficient if the content of the witness statement is briefly stated in its essential points when recording the course of the hearing.

The oath is taken by the chairperson and must be recorded in the minutes of the meeting.

§. 35. If the witnesses are prevented from appearing in court due to illness, they shall be examined in full and on oath by a commissioner of the Commercial Court with the assistance of the clerk of the court; if the



witnesses live far from the size of the Commercial Court, the local court shall be summoned to examine them.

§. 36. Evidence by inspection shall be taken by one or more members of the Commercial Court accompanied by the court clerk, who shall record the findings. The minutes shall be executed by the commissioners and the court clerk.

§. 37. If, according to the decision of the court, a party is to take an oath requested or postponed by the opponent, the summons (§. 32.) of the person who is to take the oath shall be accompanied by the warning:

that if he fails to appear at the hearing, it will be assumed that he is unable or unwilling to swear, and that the further course of action will be determined in the hearing.

The procedure for the taking of evidence by oath is the same as for the taking of witness oaths.

§. 38. The court shall rule immediately after taking evidence at the same hearing. Exceptionally, the decision may be postponed to a later hearing within the next eight days due to the complexity of the case.

The costs of the proceedings shall be borne by the party who loses the main action. If the plaintiff has claimed more than is awarded to him, the costs shall be borne by both parties according to a fair proportion corresponding to the result of the legal dispute. All costs may be imposed on the successful party in the main action if the latter has refused to accept a settlement proposed with the consent of the opposing party, but subsequently obtains by judgment only as much or less than was offered to him by way of settlement.

The decision shall be included in the minutes of the meeting together with the reasons for it. A copy thereof must be served on each of the two parties in accordance with the provisions of §. 47.

#### Fourth section. - General provisions on the procedure before the Conciliation Committee and before the Commercial Court.

§. 39. The order of the meetings and the conduct of business of the Settlement Committee and the Commercial Court shall be determined by

regulations to be drafted by the Commercial Court and submitted to the Government for approval.

§. 40. The sessions of the Commercial Court are open to the public. However, all persons not involved in the matter being heard must leave as soon as this is ordered by the chairperson following a decision by the court.

§41 During the hearings before the conciliation committee and before the industrial tribunal, the parties involved must keep within the bounds of moderation and due respect, and in the same way all others present must avoid any disturbance of the proceedings. Those who violate this obligation shall be reminded of their duty by the chairman, and if this admonition is unsuccessful, the chairman shall be authorized to have the disturber of the peace removed. In the negotiations before the conciliation committee, the member belonging to the employers' class shall have the powers of the chairman.

§. 42. Anyone who disturbs order during the hearings before the Industrial Court or the Conciliation Committee by insulting remarks or actions may be punished by a decision of the Industrial Court or the Conciliation Committee with a fine of up to five thalers or with imprisonment for up to four and twenty hours No appeal is permitted against this decision. The fines imposed shall be collected by the Commercial Court.

§. 43. Depending on whether the court consists of five, nine, thirteen or seventeen members, the presence of at least three, five, seven or nine members is required for the judgments and resolutions of the Industrial Court to be valid. Decisions and resolutions are passed by a simple majority of votes. In the event of a tie, the chairman has the casting vote.

§. 44. The original documents, findings and orders shall be signed by the presiding judge and the court clerk, but all copies shall be signed by the latter alone.

§. 45. The members of the Commercial Court are obliged to refrain from any participation in those legal cases in which they are personally involved, or in which they have given advice to one of the parties, or in which they are heard as witnesses. This obligation also applies in cases in which a member is related to a party up to the fourth degree by blood, marriage or engagement, or lives in obvious enmity with a party.

If a party is concerned that such a member will not fulfill his aforementioned duty, he is free to request the chairman of the Commercial Court to exclude the member concerned from participating in the relevant hearings and decisions.

§. 46. When appointments are made, care shall be taken to ensure that each case is heard at the next, or at least at the following session for which the summonses can still be served in good time (§. 48.).

§. 47. The summonses shall be served on the parties residing at the place of the court or in its immediate vicinity by the messenger of the Commercial Court, who shall certify service.

Parties living further away shall receive the summons free of charge through the local police authority or by post. Proof of service shall be provided with legal effect by the certificate of the local police officer or a postal receipt which, in addition to the recipient's certificate of receipt, must contain the certificate of a sworn letter carrier confirming that the summons has been duly served.

§. 48. If both parties live at the site of the court or not more than three miles from it, the summons shall be deemed to have been served in due time if one day has elapsed between the date of service and the date fixed for the hearing. If one of the two parties lives further away, the aforementioned interim period must be extended by one day for each additional distance within three miles.

§. 49. If a minor or another party who is unable to appear in court independently appears without his or her legal representative or counsel, a counsel from the class of tradesmen shall be assigned to the party if the latter does not reside in the locality. With regard to the representation of the party concerned before the settlement committee or before the commercial court, the latter shall have the same powers and obligations as the guardian or father.

It is not permitted to bring in assistants who do not belong to the class of traders.

§. 50. The parties may be represented by authorized representatives before the Conciliation Committee and before the Commercial Court only in cases of absence or illness. The authorized representatives must belong to the trade or be related by blood or marriage up to the fourth degree inclusive to

the parties they represent, or be in their service, or be involved in the matters in dispute as co-partners of the parties granting the power; a wife may also represent her husband. Other persons are not admitted as authorized representatives.

Before being admitted to the hearings, each authorized representative must provide evidence of the written mandate of the principal. In the absence of such proof, it shall be assumed that no one has appeared on behalf of the principal.

### Fifth section. - On legal remedies.

§. 51. The defendant has the right to appeal against a notice of default by way of restitutio in integrum (restitution). This appeal must be lodged with the Commercial Court in writing or on the record within three days of the date of service of the notice; it must contain a complete reply to the action.

§. 52. The court shall decide on the admissibility of the application for restitution. The decision that the application is to be granted shall be recorded in the minutes together with the annulment of the contingent decision. In such a case, the parties shall be summoned to further hearings with a copy of the decision and a warning that

a) if the plaintiff did not appear at the scheduled date, the files would be returned at his expense;

b) if the defendant does not appear, at the request of the plaintiff who has appeared, all disputed facts cited by the defendant which are not supported by evidence are deemed not to have been cited, and all documents to be submitted by the defendant are deemed not to have been submitted, but all facts cited by the plaintiff which have not yet been expressly contradicted are deemed to have been admitted, and the documents submitted by the plaintiff are deemed to have been recognized, and that the further decision will be made accordingly.

§. 53. An appeal for restitution shall also be lodged within the period specified in section 51 against a decision issued against the defaulting party in default of the date for taking a legally binding oath.

The offer to take the oath is required to substantiate such an application for restitution.

§. 54. The extent to which legal remedies other than restitution (§§. 51 - 53.), namely appeal, appeal on points of law, revision and appeal for annulment, are available against findings and decisions shall be assessed in accordance with the general procedural legislation existing in the various parts of the country.

However, the commercial court, or where no such court exists, the district or municipal court of the district shall decide on the appeal.

§. 55. The findings and decisions of the commercial courts are immediately enforceable at the plaintiff's request, irrespective of any appeals against them.

However, the following modifications apply:

1) the enforcement of the personal arrest against the defendant is excluded;

2) The defendant has the choice of whether he wishes to comply with the judgment given SN or whether he wishes to give a bond in cash or monetary securities to be determined by the court. If the lawsuit concerns a disputed object or sum, the defendant is authorized to give it to the court for safekeeping.

### Sixth section. - Stamps and fees.

§. 56. The negotiations on the settlements reached before the Settlement Committee or before the Commercial Court and their execution shall not be stamped.

A lump sum of five to fifteen silver pennies shall be levied as fees for the proceedings before the Settlement Committee.

§. 57. A lump sum of 15 Sgr. up to 5 Rthlr. shall be charged for the judicial proceedings before the Commercial Court.

The general regulations apply with regard to stamps.

### Final provisions.

§. 58. All general and special statutory provisions contrary to the above law are hereby repealed.

§. 59. Unless otherwise provided for in this Act, the general statutory provisions shall apply to legal matters referred to the commercial courts.

Authenticated under Our Supreme Signature and the Royal Seal,

Given Charlottenburg, February 9, 1849.

(L. S.) Friedrich Wilhelm.

Gr. v. Brandenburg. v. Ladenberg. v. Manteuffel. v. Strotha. Rintelen. v. d. Heydt. For the Minister of Finance: Kühne. Gr. v. Bülow.

## **7. Decree on the state of siege. From May 10, 1849. \*)**

The imposition of a state of siege during a state of peace is a recent invention, which first originated in France and was brought about by the political conditions there. The first time such a state of siege was imposed on Prussia was in Berlin in November 1848. At that time, however, there was no legal regulation of this situation anywhere, as the Instruction for Fortress Commanders only applies to fortresses and the Military Penal Code only places civilians under the laws of war if they have committed a treacherous act against the military. As a result of this gap in the legal provisions, the following law was created.

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\*) Not yet revised by the chambers.

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree at the request of Our Ministry of State on the basis of Art. 105. of the Constitutional Charter in execution of Art. 110. of the Constitutional Charter on the state of siege as follows:

§. 1. In the event of war, every fortress commander in provinces threatened by the enemy is authorized to declare the fortress entrusted to him with its rayon district, but the commanding general is authorized to declare

the district of the army corps or individual parts of it under siege for the purpose of defence.

§. 2. A state of siege may also be declared in the event of insurrection, both in times of war and in times of peace.

The declaration of the state of siege shall then be made by the Ministry of State, but may be made provisionally and subject to immediate confirmation or removal by the same, in urgent cases with regard to individual places and districts by the supreme military commander in the same at the request of the head of administration of the government district, or, if danger is imminent, by the military commander.

In fortresses, the provisional declaration of a state of siege is issued by the fortress commander.

§. 3. The declaration of the state of siege shall be announced at the sound of drums or trumpets and shall also be brought to general knowledge without delay by notification to the municipal authorities, by posting in public places and by public newspapers.

The lifting of the state of siege will be made public in the newspapers.

§. 4. With the announcement of the declaration of the state of siege, executive power shall pass to the military commanders. The civil administration and local authorities shall obey the orders and instructions of the military commanders. The military commanders concerned shall be personally responsible for their orders.

§. 5. If the Ministry of State or the military commander declaring the state of siege deems it necessary to suspend Articles 5. 6. 7. 24. 25. 26. 27. 28. of the Constitutional Charter temporarily and district by district, the provisions thereof must be expressly included in the proclamation declaring the state of siege or promulgated in a special decree to be published in the same form (§. 3.).

If the suspension of the aforementioned articles or individual articles is carried out on a temporary or district basis, the chambers must be given an account of this immediately after their meeting.

§. 6. During the state of siege, military personnel shall be subject to the laws that have been enacted for the state of war. §§. 8. and 9 of this decree shall also apply to them.

§. 7. In places or districts declared to be under siege, the commander of the garrison (in fortresses the commander) shall have superior military jurisdiction over all military personnel belonging to the garrison.

He shall also have the right to confirm the findings under the laws of war issued against these persons. The only exception to this is death sentences in times of peace; these are subject to confirmation by the commanding general of the province.

With regard to the exercise of lower jurisdiction, the provisions of the Military Criminal Code shall continue to apply.

§. 8. Whoever, in a place or district declared to be under siege, is guilty of wilful arson, of wilfully causing a flood, or of attacking or resisting the armed force or members of the civil or military authority in open violence and with weapons or dangerous instruments, shall be punished with death. A person who is guilty of such acts with open violence and with weapons or dangerous instruments shall be punished with death.

§. 9. Anyone in a place or district declared to be under siege:

a) knowingly spreads or disseminates false rumors as to the number, line of march or alleged victories of the enemy or insurgents, which are likely to mislead the civil or military authorities as to their measures, or

b) violates a prohibition issued in the interest of public safety, or incites others to commit such a violation, or

c) incites to the crimes of sedition, assault and battery, liberation of a prisoner or other crimes provided for in §. 87, even if unsuccessful, or

d) who attempts to induce soldiers to commit crimes against subordination or offenses against military discipline and order shall be punished with imprisonment of six weeks to one year, unless the existing laws provide for a higher penalty.

§. 10. If courts-martial are ordered under suspension of Art. 8. of the constitutional charter, the investigation and trial of the crimes of high



treason, treason against the country, murder, sedition, assault, liberation of prisoners, mutiny, robbery, plunder, extortion, incitement of soldiers to breach of trust, and the crimes and offenses punishable under F§. 8. and 9. shall be brought before them.

In the district of the Rhenish Court of Appeal in Cologne, crimes and offenses against the internal and external security of the state (Art. 75-108. of the Rhenish Penal Code) are to be regarded as high treason and treason against the state.

§. 11. The courts martial shall consist of five members, two of whom shall be civilian magistrates to be designated by the board of the civil court of the place and three of whom shall be officers to be appointed by the military commander in command of the place. The officers shall have at least the rank of captain; if there are no officers of this higher rank, the number shall be supplemented by officers of the next rank.

If the required number of civil magistrates is not available in a fortress encircled by the enemy, the commanding military commander shall supplement them from the members of the municipal representation. The number of courts-martial, when an entire province or a part thereof is declared to be under siege, shall be determined according to necessity, and in such cases the commanding general shall determine the judicial district of each of these courts.

§. 12. The sessions of the courts martial shall be chaired by a judicial officer.

Before the court commences its business, the presiding judge shall administer the oath to the officers appointed as members of the court and, if the case arises, to those civil members who are not members of the bench:

that they wish to fulfill the duties of the judicial office entrusted to them with conscientiousness and impartiality, in accordance with the law.

The military commander, who appoints the members of the court-martial who are officers, shall appoint an auditor or, in his absence, an officer as rapporteur. The rapporteur is responsible for monitoring the application and handling of the law and for promoting the ascertainment of the truth by means of motions. He shall not have the right to vote.

An official of the civil administration to be designated by the presiding judge of the court martial and sworn in by him shall be appointed as clerk of the court to keep the minutes.

§. 13. The following provisions shall apply to proceedings before the courts martial:

1) the proceedings shall be oral and public; the public may be excluded by the court martial by an order to be publicly announced if it deems this appropriate for reasons of public interest.

2) The accused may make use of a defence counsel.

3) In the presence of the accused, the rapporteur shall present the facts of the case.

The defendant is asked to make a statement and if he denies it, the facts of the case are established by taking evidence.

The rapporteur is then given the floor to comment on the results of the interrogations and the application of the law, and finally the accused and his counsel.

The judgment shall be passed by a majority of votes during an immediate non-public deliberation of the court and shall be announced to the accused immediately thereafter.

4) The court shall impose the statutory penalty or acquittal or refer the case to the ordinary judge.

The acquitted person shall be released from custody immediately. Referral to the ordinary judge shall take place if the court martial deems itself incompetent; in this case it shall at the same time issue a special order in the judgment concerning the continuation or revocation of the detention.

5) The judgment, which must contain the date of the hearing, the names of the judges, the summary statement of the accused on the accusation brought against him, the mention of the taking of evidence and the decision, shall be signed by all the judges and the clerk of the court.

6) There shall be no appeal against the judgments of the courts martial. However, decisions imposing the death penalty are subject to confirmation by the military commander. (§. 7.)

7) All sentences, with the exception of the death penalty, shall be carried out within 24 hours of the announcement of the verdict; death sentences shall be carried out within the same period after the announcement of the confirmation to the accused.

8) The death penalty is carried out by firing squad.

If the sentence of death has not been carried out when the state of siege is lifted, the ordinary courts shall commute this sentence to the sentence which, apart from the state of siege, would have been the legal consequence of the act which the court-martial has accepted as proven.

§. 14. The effectiveness of the courts martial shall cease with the termination of the state of siege.

§. 15. \*) After the state of siege has been lifted, all judgments issued by the court martial, together with the siege documents and associated hearings, as well as the pending cases of investigation, shall be handed over to the ordinary courts, which shall then impose the ordinary statutory penalty.

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\*) See below the declaration on this p. 15. in a special decree of July 4, 1849.

§. 16. In the event of war or insurrection, Articles 5. 6. 24. 25. 26. 27. 28. of the constitutional charter may be suspended temporarily and district by the Ministry of State, even outside the state of siege.

The provision in the second paragraph of §. 5. also applies in such a case.

§. 17. The above ordinance enters into force today.

Authenticated under Our Supreme Signature and the Royal Seal.

Given Charlottenburg, May 10, 1849.

(L. S.) Friedrich Wilhelm.

Gr. Brandenburg. v. Ladenberg. v. Manteuffel. v. Strotha.

v. d. Heydt. v. Rabe. Simons.

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## **8. Ordinance concerning the punishment of offenses against the Telegraphen-Anstalten. From June 15, 1849.\*)**

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree, at the request of Our Ministry of State, on the basis of Article 105. of the Constitutional Charter, the following:

§. 1. Anyone who intentionally commits acts against a telegraph station of the state or a railroad company which prevent or disrupt the use of this station for its purposes shall be punished with imprisonment from three months to three years.

Acts of this kind are in particular: the removal, destruction or damage of the telegraph line, the equipment and other accessories of the telegraph systems;

the connection of foreign objects with the wire;

the falsification of the signs given by the telegraph;

Preventing the restoration of a destroyed or damaged telegraph system;

the prevention of telegraph officers from carrying out their duties.

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\*) Revised and approved by both chambers in accordance with the State Ministerial Proclamation of 4 January 1850.

§. 2. If, as a result of the prevented or disturbed use of the institution, a person's body or health has been damaged, the guilty party shall be liable to imprisonment from one to eight years, and if a person has lost his life, imprisonment from three to fifteen years.

If, in the latter case, the intention was to kill, the penalty of murder applies.

§. 3. Anyone who negligently commits acts against a telegraph station of the state or a railroad company which prevent or disrupt the use of this station for its purpose shall be punished with imprisonment for up to six months.

If a person's body or health has been damaged as a result of the prevented or disturbed use of the institution, the penalty is imprisonment for up to one year, and if a person has lost his life, imprisonment for up to two years.

§. 4. The penalties of §. 3. shall also apply to the persons employed to supervise and operate the telegraph stations and their accessories if they prevent or disrupt the use of the station by neglecting their duties.

§. 5. Telegraph officers who are convicted of one of the offenses described in this ordinance shall, in addition to the penalty imposed, be declared to have forfeited their employment and to be incapable of any further employment in the telegraph and railroad service.

§. 6. The managers of the railroad companies who do not immediately cause the dismissal of the convicted officer after notification of the decision have forfeited a fine of ten to one hundred thalers. The same penalty shall be imposed on the officer if he subsequently allows himself to be re-employed by a telegraph administration or railroad, as well as on those who have re-employed him although they were aware of his incapacity.

Authenticated under Our Supreme Signature and the Royal Seal.

Given Bellevue, June 15, 1849.

(L. S.) Friedrich Wilhelm.

Gr. v. Brandenburg. v. Ladenberg. v. Manteuffel. v. Strotha  
v. d. Hehdt. v. Rabe. Simons.

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**9. Ordinance concerning the reproduction and distribution of writings and various criminal acts committed by word, writing, printing, signs, pictorial or other representation. Of June 30, 1849 \*)**

The following law deals specifically with the regulation of press conditions and is therefore often referred to as the Press Law, although it does not deal solely with the press. This law was prompted by the fact that the law of May 17, 1848., suddenly established freedom of the press in Prussia, without there being a specific law on the regulation of press conditions. The few norms issued by the law of May 17, 1848., were almost completely repealed by the decree of April 6, 1848., and therefore nothing remained but a reference to the provisions of the General Land Law, which, however, all provide for censorship and are therefore nowhere quite appropriate. The law of January 30, 1849, seeks to regulate the question of who should be responsible for a printed publication. However, it also contains important provisions on the penalties for crimes committed by the press or otherwise in public, namely lèse majesté, insulting public officials, high treason, and so on. In these provisions, the law mitigates the harsh penalties under state law throughout, namely it often allows for mere fines. However, the law is considerably stricter in that it has created a new type of crime, namely incitement to commit a crime, which, however, has not been successful. According to the law of the land, such incitement was only punishable if a punishable act had actually occurred as a result.

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree, at the request of Our Ministry of State, on the basis of Article 105. of the Constitutional Charter, the following:

**Order of the press.**

§. 1. The name and place of residence of the printer must be stated on every printed document.

In addition, the name and place of residence of either the publisher or the commission agent, or finally of the author or editor who has a work published by himself, must be stated on printed matter intended for the book trade or otherwise for distribution.

§. 2. Each number, piece or issue of a newspaper or periodical must contain, in addition to the name and place of residence of the printer (§. 1), the name and place of residence of the publisher and of the editor, if different from the publisher.

§. 3. Printed matter that does not comply with the above regulations may not be distributed by anyone.

This provision shall not apply to printed publications which contain only the name of either the publisher or the commission agent or the printer if they comply with the laws on the organization of the press which were in force in the place where they were published at the time of their publication.

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\*) Not yet revised by the chambers.

§. 4. The previous obligation of the publisher to send two copies of his published articles free of charge, one to the State Library in Berlin and the other to the university of the province in which he resides, shall not be changed.

§. 5. The publisher must deposit a signed copy of each number, issue or piece of a newspaper or a periodical published monthly or at shorter intervals in the country with the local police authority as soon as distribution or dispatch begins, against a certificate to be issued to him.

The distribution and dispatch of the newspaper or magazine should not be delayed by the deposit.

§. 6. The publisher of a newspaper, or of a periodical appearing at monthly or shorter intervals, which accepts advertisements, shall be obliged, against payment of the usual indentation fees, to include in one of the next two issues any official notice communicated to him by a public authority at the latter's request.

§. 7. The publisher of a newspaper or of a periodical appearing at monthly or shorter intervals shall be obliged to include in the next issue of the newspaper or periodical a rebuttal correcting the facts mentioned therein which the public authority concerned or the private person challenged feels compelled to make within three days of receipt of the rebuttal, or if no issue of the newspaper or periodical appears during this period. - The inclusion must be free of charge, provided that the length of the reply does not exceed the length of the article which gave rise to it. The usual indentation fees must be paid for lines exceeding this length.

## Posters and flyers.

§. 8. Notices and posters with a content other than: Announcements of meetings not prohibited by law, which have been preceded by the required notification or authorization, announcements of public amusements, of stolen, lost or found objects, of sales or similar notices for commercial traffic, may not be posted, pinned up or otherwise publicly displayed.

In cities and towns, notices and posters, even if they are permitted according to their content, may not be posted, pinned or otherwise publicly displayed in places that have been designated as unsuitable for this purpose by a general and publicly announced order of the local police authority.

The above provisions do not apply to official announcements by public authorities.

## Sale, pinning etc. of writings in public places.

§. 9. No person may proclaim, sell, distribute, affix or post printed matter (Section 30.) or other writings on public ways, streets or squares, or in other public places, without having obtained the permission of the local police authority and without carrying the permit in which his name is expressed. Permission may be withdrawn at any time.

§. 10. Violation of any of the provisions contained in §§. 1. 2. 3. 5. 6. 7. shall result in a fine of five to fifty thalers.

If one of the statements required by §§. 1. and 2 is false, the penalty is imprisonment from eight days to two months and a fine of five to fifty thalers.

The disseminator is only liable to this higher penalty if he was aware of the inaccuracy of the information.

§. 11. Violation of any of the provisions contained in §§. 8. and 9 shall result in a fine of one to fifty thalers or imprisonment for one to six weeks.

## Responsibility of the authors, editors, etc.

§. 12. The author, the editor, the publisher or commission agent, the printer and the disseminator shall be responsible as such for the content of a



printed publication, without any further proof of contributory negligence being required. If the publication was made without the will of the author, the publisher shall be responsible instead.

However, none of the persons listed in the above order may be prosecuted if one of the persons listed above is known and within the jurisdiction of the state.

This provision does not preclude the simultaneous prosecution of those in respect of whom, apart from the mere act of publication, publishing or commission, printing or distribution, there are other facts which, according to general principles of criminal law, constitute knowing participation in the criminal offense committed by the printed publication.

### Criminal solicitation or inducement.

§13. anyone who publicly incites or provokes the commission of a punishable act shall, if a punishable act has actually been committed as a result of the incitement or provocation, be liable to the statutory penalty for the act committed.

If a criminal attempt is made as a result of the solicitation or inducement, the person making the solicitation or inducement shall be liable to the statutory penalty for the attempt.

§. 14. If the public incitement or inducement to commit a criminal offense has been without any success, the guilty party shall be fined from twenty to two hundred thalers, or imprisoned from four weeks to two years. If, however, the act to which the incitement or inducement was given is punishable by the highest or lowest degree of punishment, the punishment for the incitement or inducement may not exceed this highest degree; it may be reduced to this lowest degree.

If the incitement or inducement, which has remained unsuccessful, was directed at a crime provided for by §. 92. Thl. II. tit. 20. of the General Land Law (high treason) or Articles 96. and 87. of the Rhenish Penal Code, the punishment shall be imprisonment from two to ten years. If there are mitigating circumstances, the penalty may be imprisonment from six months to ten years.

§. 15. Being guilty of incitement to criminal acts is punishable by a fine of twenty to two hundred thalers, or imprisonment from four weeks to two years:

1) anyone who displays flags, signs or symbols capable of spreading the spirit of sedition or disturbing the public peace in public places or at public gatherings, or who sells or otherwise distributes them;

2) anyone who wears external signs of association or union, which are prohibited by the district government in order to maintain public peace and security, in public places or in public gatherings;

3) anyone who maliciously removes, destroys or damages the public signs of the Royal Authority.

§. 16. Anyone who publicly incites or provokes disobedience against the laws or ordinances, or against the orders of the competent authorities, shall be punished with a fine of twenty to two hundred thalers, or imprisonment from four weeks to two years.

§. 17. Whoever seeks to disturb the public peace by publicly inciting the members of the state to hatred or contempt against each other shall be punished with a fine of twenty to two hundred thalers, or with imprisonment from four weeks to two years.

§. 18. Whoever publicly asserts or disseminates fictitious or distorted facts which, assuming their truth, expose the institution of the state or the order of the authorities to hatred or contempt, shall be punished with a fine of twenty to two hundred thalers, or with imprisonment from four weeks to two years.

(19) Whoever makes public remarks about a religious society existing in the state or its doctrines, institutions or customs in such a way as to expose the same to hatred or contempt shall be punished with a fine of twenty to two hundred thalers, or with imprisonment from four weeks to two years.

### Lèse majesté.

§. 20. Whoever, by word, writing, print, sign, pictorial or other representation, defames reverence for the King shall be punished by imprisonment from two months to five months. months to five years.

Anyone who offends the Queen by one of the means described will be punished with the same penalty.

Insulting the heir to the throne, other members of the royal house etc.

§. 21. Whoever insults the heir to the throne, another member of the Royal House or the Regent of the Prussian State by word, writing, print, sign, pictorial or other representation shall be punished with imprisonment from one month to three years.

§. 22. Whoever insults by word, writing, print, sign, pictorial or other representation the head of a German state or another state in recognized international relations with the Prussian state shall be punished with imprisonment from one month to two years.

Insulting the chambers, political bodies, authorities etc.

§. 23. Whoever, by word, writing, print, sign, pictorial or other representation

one of the chambers,  
a member of both chambers,  
another political body,  
a public authority,  
a public official,  
a religious servant,  
a juror,  
a member of the armed forces,

while they are engaged in the exercise of their profession, or insults them in relation to their profession, shall be punished with imprisonment from eight days to one year.

If the offense has the character of defamation, the penalty is imprisonment from fourteen days to eighteen months.

If the offense is committed in public, the penalty is imprisonment from one month to two years.

If there are mitigating circumstances, the penalty may in all cases be a fine of ten to three hundred thalers. Displacement of morality.

§. 24. Whoever publishes, sells, distributes or otherwise disseminates printed matter that is immoral, or exhibits or displays it in places that are accessible to the public, shall be punished with a fine of ten to one hundred thalers, or with imprisonment of fourteen days to one year.

### Default.

§. 25. Whoever asserts or disseminates untrue facts in relation to another, which in the public opinion make him look hateful or contemptuous, is guilty of defamation.

§. 26. Proof of the truth of the alleged or disseminated facts may be given by any legal means of proof. This evidence shall not be admissible if the act attributed to the other person is punishable by law and an acquittal has been obtained by a final judgment.

§. 27. Proof of the truth of the facts asserted or disseminated does not exclude the existence of an offense if the intention to offend is apparent from the form of the assertion or dissemination or from other circumstances in which it was made.

§. 28. If the alleged or disseminated facts are criminal acts and a complaint has been made to the competent authority in respect of them, the proceedings and the decision on the violation must be held in abeyance until the decision has been taken not to open an investigation or until the investigation initiated has been concluded.

§. 29. Default shall be punishable by imprisonment from eight days to one year.

If the offense is committed in public, the penalty is imprisonment from fourteen days to eighteen months.

If there are mitigating circumstances, the penalty may be set at a fine of five to three hundred thalers in all cases.

§. 30. All mechanical reproductions of any kind of writings, pictorial representations with or without writing, and of musical works with text or

other explanations shall be deemed equivalent to printed publications within the meaning of this Ordinance.

§. 31. An act is public within the meaning of Sections 13, 14, 16, 17, 18, 19, 23, 29 of this Ordinance if it is performed in public places or in public meetings, or by means of printed matter or other writings which are sold, distributed, displayed or posted in places accessible to the public.

Meetings in which public matters are to be discussed or deliberated are also regarded as public gatherings (Ordinance of June 29, I).

### Provisional confiscation of printed matter.

§. 32. If a printed publication intended for distribution does not comply with the provisions of Sections 1 and 2, or if its content constitutes a criminal offense, the public prosecutor's office and its organs shall be entitled to provisionally confiscate the printed publication where they find it, as well as the plates and forms intended for reproduction.

The organs of the public prosecutor's office are obliged to submit the proceedings to the public prosecutor's office within 24 hours of the seizure, and the public prosecutor's office is obliged to submit its decision within 24 hours of the submission.

applications to the competent judicial authority, which must decide on the continuation or lifting of the provisional seizure imposed as soon as possible.

Insofar as an authorization or an application is required for prosecution on account of a printed publication (§. 34.), a seizure on account of the contents of the same shall only take place under the same condition.

§. 33. The organs of the public prosecutor's office within the meaning of the preceding paragraph are the police authorities and other security officials who have a duty under existing laws to investigate crimes and misdemeanors.

In the district of the Rhenish Court of Appeal in Cologne, these are the officers and auxiliary officers of the judicial police, with the exception of the examining magistrates:

The investigating judge must always report to the council chamber for its decision on the lifting or continuation of the seizure.

The power of the courts and investigating judges to intervene independently in the cases specified by law will not be changed.

### Pursuit.

§. 34. The public prosecutor's office is also authorized to initiate prosecution in respect of the insults provided for in sections 23 and 29. However, prosecution for insulting a chamber shall only take place with the authorization of the chamber, and for the other insults provided for in §. 23. and §§. 22. and 29 only at the request of the insulted party.

If a judicial investigation has been initiated in response to the action brought by the public prosecutor's office, its progress, the issuance and enforcement of the judgment shall be determined by the court:

judgment, by a withdrawal of the authorization or the application, or by a waiver of the punishment.

If the public prosecutor's office does not intervene, the offended party is at liberty to prosecute by way of civil proceedings.

In the district of the Rhenish Court of Appeal at Cologne, the right of the offended party to appear as a civil party is not changed. Statute of limitations.

§. 35. The right to prosecute for the publicly committed criminal acts provided for in this Ordinance shall lapse six months after the day on which the publication (Section 31) took place.

The limitation period shall be interrupted by any application by the public prosecutor, any order or any other act of the judge relating to the opening, continuation or termination of the investigation or the arrest of the accused.

The interruption of the limitation period against one of the responsible or complicit persons shall also be deemed to apply to those responsible or complicit persons against whom the application, decision or other interrupting act was not directed.

A new limitation period of six months shall commence from the date of the last interrupting act.

These provisions shall not affect actions for injuria, in so far as they may be brought by way of civil proceedings, and actions for damages before the civil courts.

### Public announcement of the judgment, destruction of unlawful printed matter.

§. 36. If a conviction is pronounced for a public offense provided for in sections 18 to 24 or in section 29, the public announcement of the judgment may be ordered in the manner to be determined therein at the expense of the convicted person.

§. 37. If the content of a printed publication constitutes a criminal offense, the destruction of all available copies and the plates and forms intended for this purpose shall be ordered.

If the main content of the printed matter is lawful, only the destruction of the unlawful passages and that part of the plates and forms on which these passages are located will be recognized.

### Place of jurisdiction.

§. 38. In the event of the court order referred to in §. 32. and the occurrence of further legal proceedings, the place of jurisdiction shall also be the court in whose district the seizure took place.

If proceedings in respect of the same printing deadline are pending before different courts, the court before which the hearing and decision are to take place shall, if necessary, be designated by the higher court whose jurisdiction extends over the districts of the different courts dealing with the matter.

In the district of the Rhenish Court of Appeal at Cologne, the provisions in force there concerning the regulation of the place of jurisdiction (Code of Criminal Procedure Art. 525. to 541.) shall not be changed.

§. 39. The criminal offenses provided for in Sections 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 of this Ordinance fall within the jurisdiction of the jury courts.

The same applies to the offenses mentioned in §. 23. which are committed by means of printed publications (p. 30.) which are sold, distributed, displayed or posted in places accessible to the public.

The other offenses provided for in §. 23. and those provided for in §§. 10. and 11., 24. and 29. shall not be considered political or press offenses. (Ordinance of April 15, 1848. §§. 2. and 3. and of January 3, 1849. §§. 60. and 61.)

§. 40. In so far as, according to the existing laws, criminal acts committed in the course of a court session should or can be judged immediately, without the participation of a jury, or disciplinary offenses that have occurred or have been determined in the course of a court session can or should be punished immediately, the provisions of the preceding paragraph shall not change this.

With regard to military jurisdiction, the existing provisions also remain in place.

§. 41. The provisions of the existing laws on insults committed against private persons which do not contain the characteristics of defamation, on insults committed by persons of the military rank among themselves, whether or not they are to be regarded as official offenses, furthermore on the transfer of official or service regulations, in particular official secrecy, finally on the publication of news or documents which is prohibited by law in the interest of the welfare of the state, shall not be affected by this ordinance.

§. 42. Insofar as the incitement or inducement of persons of military rank to disobedience is not to be punished more severely in accordance with the provisions of this ordinance, the provisions of the ordinances of May 10 and May 23 of this year shall continue to apply.

§. 43. All provisions contrary to this ordinance are repealed. In particular, the Preßgesetz of March 17, 1848., §§. 151. to 155 inclusive, §§. 620. 621, Thl. I., Tit. 20. of the General Land Law, Art. 102. 201. 204. 217., furthermore Art. 367. to 372. inclusive and the provision of Art. 374. of the Rhenish Penal Code relating to these Art.



Authenticated under Our Supreme Signature and the Royal Seal.

Given Sanssouci, June 30, 1849.

(L. S.) Friedrich Wilhelm.

Gr. v. Brandenburg. v. Ladenberg. v. Manteuffel. v. Strotha.

v. d. Heydt. v. Rabe. Simons.

**10. Decree on the declaration of §. 15. of the Decree of May 10 of this year on the state of siege. Of July 4, 1849 \*)**

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree, at the request of Our Ministry of State, on the basis of Article 105. of the Constitutional Charter, the following:

§. 1. Section 15 of the Ordinance on the State of Siege of May 10 of this year shall contain the following wording:

After the state of siege has been lifted, all judgments issued by the court martial, together with the siege documents and the associated hearings, as well as the pending cases under investigation, shall be handed over to the ordinary courts; these shall pronounce the ordinary statutory penalty in the cases not yet adjudicated by the court martial.

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\*) See above the ordinance of May 10, 1849.

§. 2. The present declaration comes into force as of today.

Authenticated under Our Supreme Signature and the Royal Seal.

Given Sanssouci, July 4, 1849.

(L. S.) Friedrich Wilhelm.

Gr. v. Brandenburg. v. Ladenberg. b. Manteuffel. v. Strotha.

v. d. Heydt. v. Rabe. Simons.

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## **11. Ordinance concerning the misconduct of judges and their involuntary transfer to another position or retirement. Bom July 10, 1849 \*)**

Disciplinary laws of a general nature did not exist for civil servants in the past, as the superior authorities had free disposition over their civil servants, even the judges were previously foreseeable, only in the pension regulations and in the provisions of the land laws on the duties and rights of civil servants and the crimes of civil servants were there provisions of the relevant kind. However, the claims of civil servants under the pension regulations were not suitable for judicial prosecution according to the express content of the same. In the following two laws, the relationships of judicial and non-judicial civil servants are definitively established and, in particular, the supreme supervision of judicial civil servants has largely been transferred from the Minister of Justice to the Supreme Tribunal.

We Frederick William, by the grace of God, King of Prussia etc. etc.  
Decree, at the request of Our Ministry of State, on the basis of Article 105 of the Constitutional Charter, the following;

### **First section. - General provisions on official misconduct and its punishment.**

#### **Misconduct in general.**

§. 1. Misconduct is any breach of the duties imposed on a judge by his office.

These duties shall include that the judge, by his conduct in and out of office, shall prove himself worthy of the respect, reputation and confidence which his profession demands.

#### **Official misconduct.**

§. 2. Crimes against public office for which punishment is imposed under the existing laws on the basis of proceedings before the ordinary criminal courts are only those breaches of official duty which are punishable by a penalty under ordinary criminal law, whether this consists of

imprisonment or a more severe penalty, perpetual or temporary disqualification from holding public office, or other perpetual or temporary deprivation or restriction of civic rights, a position under police supervision, or a fine of an amount depending on the extent of the damage caused or the profit sought.

This provision shall apply irrespective of whether the offense is punishable only by a penalty under common criminal law or, at the same time as dismissal from office, by another of the penalties specified in p. 4, nos. 1 and 2; it shall also apply in cases where dismissal from office is threatened as an aggravation of a fine under common criminal law.

§. 3. The provision of p. 333 of the General Land Law, Part II, Title 20, shall not apply if the judge has not committed a breach of his official duty with the intention of gaining advantage for himself or others, or causing disadvantage to the state or others.

#### Mere official misconduct.

§. 4. the following are mere official misconduct for which only disciplinary proceedings and punishment in accordance with the provisions of this Ordinance shall take place:

1) those which in the previous laws are only threatened with warning, reprimand, transfer, suspension, dismissal (loss of office, dismissal from office, removal from office, cassation), or where at the same time or exclusively a fine of a different kind than that specified in §. 2. is threatened;

2) those who are threatened with degradation in the previous laws, even if any other punishment is threatened at the same time;

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\*) Not yet revised by the chambers.

3) those based solely on ignorance or negligence (error, oversight, as carelessness, negligence, rashness)

4) the distance without leave or exceeding the leave;

5) all other transfers of official duty that are not provided for in the penal code.

§. 5. If the law imposes an obligation to pay restitution or damages or any other obligation under civil law in the case of mere misconduct, the action of the parties concerned shall be brought before the civil court.

§. 6. Insults or assaults committed by a judge in office shall be punishable by the fine or imprisonment imposed for these offenses on the basis of ordinary judicial proceedings. Whether a disciplinary penalty is also to be imposed on the judge shall be decided only by disciplinary proceedings.

### Disciplinary and ordinary criminal proceedings for the same facts.

§. 7. Disciplinary proceedings shall not be barred by the fact that the act which is the subject of the accusation constitutes a common crime or offense, a misdemeanor or a crime against public office (§. 2.), that a criminal prosecution has been instituted for the same, that an acquittal has been obtained, or that such a conviction has been pronounced which is neither forfeiture of office nor entails the same by operation of law (p. 9.).

§. 8. In the course of an investigation before the ordinary criminal courts, disciplinary proceedings may not be instituted against the accused for the same facts unless it is urgently required by the interests of the service.

If, in the course of disciplinary proceedings, an investigation is opened against the accused before the ordinary criminal courts on the same facts, the disciplinary court may order the suspension of the disciplinary proceedings, if necessary until the criminal proceedings have been finally disposed of.

In such cases, the public prosecutor at that court (senior public prosecutor, Procurator General) and the accused may appeal to the Supreme Court against the decision of a court of appeal to initiate, continue or suspend disciplinary proceedings.

### Loss of office as a result of other penalties.

§. 9. The sentence to imprisonment or hard labour, to another prison sentence of one year or longer, to a more severe punishment, to permanent or temporary incapacity for public office, to any other permanent or temporary deprivation or restriction of civic rights, or to a position under police

supervision, shall automatically result in the loss of office and, in the case of retired judges, in the loss of pension, without this being specifically recognized.

#### Unauthorized removal from office.

§. 10. A judge who absents himself from his office without the prescribed leave, or who exceeds the leave granted, shall forfeit his service income for the period of the unauthorized absence.

§. 11. If the unauthorized removal lasts longer than eight weeks, the judge has forfeited his or her dismissal.

If the judge has been ordered to return to his office, the penalty of dismissal shall apply if four weeks have elapsed without result since the order was issued.

§. 12. Withdrawal of service income (§. 10.) shall be ordered by the authority which is to grant the leave. In the event of an objection, a disciplinary decision shall be taken. An appeal may be lodged against the judgment if the service income in question exceeds one month.

§. 13. Dismissal can only be made through disciplinary measures.

This will not be recognized if it turns out that the judge was absent from his office through no fault of his own and at the same time found himself unable to apply for leave or its extension.

§. 14. The initiation of disciplinary proceedings for unauthorized removal from office and dismissal before the expiry of the time limits (§. 11.) is not excluded if it appears to be justified by the particular circumstances.

#### Service of summonses etc.

§. 15. The summons referred to in Section 11, as well as all other summonses, notices, service and subpoenas made in accordance with the provisions of this Ordinance, shall be valid and cause the time limits to run if they are served on the person to whom they are addressed in person or at his last residence at the place where he is legally supposed to have his domicile. Reminder of official duties.

§. 16. A judge who is charged with a minor disciplinary offense shall, after a prior explanation required of him, be made aware of the duties imposed on him by his office.

The president or director of each court has the right to issue this warning ex officio or at the request of the public prosecutor in respect of the other members of the same; the conductor of a district court deputation in respect of the members of this deputation. In respect of single judges, it shall be vested in the president or director of the court of first instance in whose judicial district the judge is employed; in respect of the presidents or directors of the courts of first instance, in the first president of the court of appeal; in respect of the first presidents of the courts of appeal, in the first president of the supreme court.

If the judge to whom the admonition is addressed is present, a record shall be made; if he is absent, it shall be made by a letter containing the reasons, the original of which shall be retained.

§. 17. If the warning has been unsuccessful, or if it appears to the competent disciplinary court (p. 21.) to be insufficient, disciplinary punishment shall be imposed.

### Disciplinary sanctions.

§. 18. Disciplinary penalties are:

- 1) Warning,
- 2) Reference.

This can be combined with a fine, the amount of which does not exceed one month's service income.

3) Temporary absence from official duties for a minimum of three months and a maximum of one year.

This penalty shall entail the loss of the service income for its duration by operation of law. However, the disciplinary court is authorized to declare in the judgment that the convicted person is to be given a certain part of his service income, which may not exceed half of it, for the duration of the punishment, for his necessary maintenance.

#### 4) Dismissal.

This penalty automatically entails the loss of the title and pension entitlement; it is not specifically recognized.

§. 19. Which of the penalties specified in the preceding paragraph is to be applied shall be determined according to the greater or lesser seriousness of the misconduct, taking into account the other conduct of the accused, without prejudice to the special provisions of SS. 10. and 11.

### Second section. - Disciplinary proceedings.

§. 20. The application of a disciplinary penalty must be preceded by formal disciplinary proceedings. This shall consist of a preliminary investigation conducted by a judge commissioner and an oral hearing before the competent disciplinary court.

### Disciplinary courts.

§. 21. The competent disciplinary courts are

1) the High Tribunal in respect of its members and the Presidents and Directors of the Courts of Appeal;

2) the Rhenish Court of Appeal and Cassation in respect of its members, the Presidents of the Rhenish Court of Appeal and the Director of the Judicial Senate at Ehrenbreitstein;

3) the Courts of Appeal, including the Court of Appeal at Cologne and the Senate of Justice at Ehrenbreitstein, in respect of their members, with the exclusion of the Presidents and Directors, and in respect of all other judges of their judicial district.

§. 22. Only the full-time members and those who hold a full-time position may participate in the handling of disciplinary matters.

§. 23. Disciplinary matters shall be dealt with by the High Tribunal in the section of the Court usually presided over by the First President. If the number of members of this division is less than eleven, or if individual members thereof are unable to attend, the Presidents and other members of

the Court who are the oldest in terms of seniority shall be called in until the number of eleven is reached.

The settlement of a disciplinary case must take place in a plenary meeting of the Court if this is decided in a plenary meeting after hearing the public prosecutor. The First President may convene a plenary meeting for the purpose of taking a decision. It must be convened if a division of the Court so requests or if the Public Prosecutor submits a written request supported by reasons.

As long as the oral proceedings have not begun, the Court may decide that the further proceedings should take place in the ordinary way.

§. 24. The Rhenish Court of Appeal and Cassation shall also deal with disciplinary matters in the composition prescribed for its decisions.

§. 25. Disciplinary matters may only be dealt with by a Court of Appeal if at least seven members, including the chairman, are present.

If the Court consists of more than nine members, it shall be held in the division of the Court in which the First President usually presides. If the number of members of this division is less than seven, or if individual members thereof are unable to attend, the Presidents, Directors and other members of the Court who are the oldest in terms of seniority shall be called upon to attend until the number of seven is reached.

The provisions of the second and third paragraphs of section 23 shall also apply to the courts of appeal.

In the case of courts consisting of no more than nine members, disciplinary matters are always dealt with in a plenary meeting.

§. 26. The High Tribunal shall, at the request of the public prosecutor at the Court of Appeal or of the accused, refer the handling of a disciplinary case to another Court of Appeal if there are fewer than seven members of the competent court who are not prevented from attending.

The High Tribunal may, at the request of the public prosecutor or an accused person, decide to refer the case if there are reasons to doubt the impartiality of the competent court.



§. 27. In the case of the second paragraph of Section 26, the Rhenish Court of Appeal and Cassation shall designate the Senate of the Court of Appeal by which the disciplinary matter is to be settled.

He may refer the matter to himself for investigation and decision.

### Competence - Disputes.

§. 28. Disputes concerning the competence of the Courts of Appeal in disciplinary matters shall be decided by the Supreme Court.

If there is a conflict between the Rhenish Court of Appeal and another court of appeal, the two supreme courts shall meet.

### Preliminary examinations.

§. 29. A disciplinary investigation may only be initiated by a decision of the Disciplinary Court. The First President of the court which orders the initiation shall assign a judge to conduct the preliminary investigation, subject to the case provided for in the last paragraph of §. 32.

§. 30. A decision on the initiation of the disciplinary investigation must be taken either ex officio, but after hearing the application of the public prosecutor, or at the request of the public prosecutor.

§. 31. The public prosecutor may appeal to the Supreme Court against the decision of the Court of Appeal refusing to open a disciplinary investigation.

§. 32. If the Court of Appeal fails to initiate a disciplinary investigation in cases where it should take place, the Supreme Court shall be called upon to bring the facts in question to its attention. If this is unsuccessful, the Court may refer the matter to itself for investigation and decision.

The High Tribunal may also order the initiation of the investigation and refer the case to another Court of Appeal for further hearing and decision. In this case, the First President of the Court of Appeal to which the case has been referred shall be entitled to designate the judge who is to conduct the preliminary investigation.

§. 33. In the preliminary investigation, the accused shall be summoned and, if he appears, heard; witnesses shall be examined on oath and other evidence serving to clarify the case shall be obtained.

The files are submitted to the public prosecutor before the conclusion of the preliminary investigation for the submission of his application.

§. 34. After the preliminary investigation has been concluded, a date shall be set for the oral hearing of the case, to which the accused shall be summoned, emphasizing the facts with which he is charged.

### Oral hearing.

§. 35. At the oral hearing, which shall take place in closed session, a speaker appointed by the chairman of the disciplinary tribunal from among the members of the tribunal shall first give an account of the case as it emerges from the previous hearings.

The accused is questioned.

The public prosecutor is then heard with his preliminary and motion and the defendant in his defence.

The defendant has the right to speak.

§. 36. If the court, at the request of the defendant or the public prosecutor, or also ex officio, considers it appropriate to hear one or more witnesses, whether by a judge commissioner or orally before the court itself, or to obtain other means of clarifying the case, it shall issue the necessary order and, if necessary, adjourn the continuation of the case to another day, which shall be notified to the defendant.

§. 37. The accused who appears may be assisted by an advocate or lawyer as defence counsel.

The accused who fails to appear may not be represented unless the disciplinary court has permitted him to be represented by an advocate or lawyer in the summons or subsequently. The disciplinary court shall be entitled at any time to subsequently order the personal appearance of the accused.

§. 38. The judgment, which must contain the grounds for the decision, shall be pronounced at the hearing in which the oral proceedings have been concluded or at one of the next hearings.

§. 39. Minutes shall be taken of the oral proceedings, which must contain the names of those present and the essential moments of the proceedings. The minutes shall be signed by the chairman and the keeper of the minutes.

§. 40. The legal remedy of objection (restitution or opposition) shall not take place.

### Appeal.

§. 41. An appeal may be lodged with the Supreme Court against judgments handed down by the courts of appeal, subject to the following more detailed provisions:

The accused may appeal against any judgment pronouncing his temporary removal from his official duties or his dismissal; the public prosecutor may appeal to the court of appeal against any final judgment.

§. 42. Notice of appeal shall be filed for the record with a clerk of the court that has issued the judgment to be appealed. It may also be made by an authorized representative of the convicted person on the basis of a special power of attorney granted to him for this purpose.

The time limit for this application is four weeks, which begins at the end of the day on which the judgment is delivered, and for the defendant who was not present at that time, at the end of the day on which the judgment was delivered to him.

§. 43. The Supreme Court is seized with the whole case by the appeal, even if it has been lodged only by the public prosecutor or only by the accused, and if it is directed only against individual provisions of the judgment, just as if the appeal had been lodged by both sides against the whole content of the judgment,

§. 44. The provisions of SS. 34. to 40. shall also apply in the appellate instance.

§. 45. The appeal for annulment (appeal in cassation) shall not take place in disciplinary matters.

If the appeal is admissible and has been lodged, the nullity complaints are treated as appeals.

Third section. - On the suspension from office.

Suspension by operation of law.

§. 46. The suspension of a judge from office shall take effect by operation of law:

1) if, in the ordinary criminal proceedings, it has been decided to arrest him or if a judgment has been passed against him which has not yet become final and which amounts to forfeiture of office or entails such forfeiture by operation of law;

2) if, in disciplinary proceedings, a judgment on dismissal or temporary removal from duties has been issued which has not yet become final.

§. 47. In the case provided for in the preceding paragraph under number 1, the suspension shall automatically cease at the end of the tenth day after the order of arrest has been revoked or after the judgment of a higher instance by which the accused judge is sentenced to a penalty other than that specified has become final, unless the suspension is decided by the Office by way of disciplinary proceedings before the expiry of this period.

If the final judgment is a custodial sentence, the suspension lasts until the judgment has been executed. If the execution of the sentence is stayed or interrupted through no fault of the convicted person, there shall be no reduction in salary (p. 50.) for the period of the stay or interruption.

In the case mentioned under number 2, the suspension shall last until the judgment in the disciplinary case becomes final.

Suspension by resolution.

§. 48. If the decision to initiate the disciplinary investigation is issued in the course of the investigation, the court before which the investigation is pending may, ex officio, but after hearing the application of the public prosecutor, or at the request of the public prosecutor, decide to suspend the

accused from office if this appears appropriate in view of the seriousness of the offense.

The same power shall be vested in the competent disciplinary court in all cases where an investigation has been initiated against a judge by way of ordinary criminal proceedings.

§. 49. The public prosecutor may appeal to the Supreme Court against the order of a court of appeal imposing or refusing suspension, and the accused may appeal to the Supreme Court against the order imposing suspension.

The challenged decision is enforced until the reopening.

#### Influence of suspension on service income.

§. 50. The suspended judge shall retain half of his or her salary during the suspension; however, if dismissal from office has been pronounced against him or her by a judgment of the first instance, or if the loss of office is the consequence of the judgment rendered by operation of law (§. 9.), then from the time of the publication of the judgment until the final decision of the case only the amount necessary for his or her subsistence, which may never exceed half of the salary, shall be paid to him or her.

No account is to be taken of the special amounts set for service costs when calculating half of the service income.

The costs of the representation of the accused and of the investigation proceedings shall be paid from the part of the service income retained. p. 51  
The part of the income not used for the costs (§. 50.) shall be paid to the judge if the investigation has not resulted in the penalty of temporary removal from official duties or loss of office.

The judge is not entitled to receive reminders about the use of the income; however, he must be provided with evidence of this use on request.

§. 52. If the judge is acquitted, the part of the service income retained must be paid to him in full.

#### Fourth section. - Involuntary transfer to another position.

§. 53. The transfer of a judge from one post to another against his will may, except in cases where it is necessitated by changes in the organization of the courts or their districts, only take place if it is urgently required by the interests of justice.

Cases of this kind are, in particular, if, through the fault of the judge, which, however, does not justify his dismissal from office, relations have arisen between him and other members of the same court which prevent a fruitful cooperation, or if other causes, which do not justify the dismissal from office, substantially disturb or endanger the official effectiveness of the judge in his previous position, and if there are sufficient reasons to assume that those circumstances will not prevent the official effectiveness of the judge in another position.

§. 54. If a relationship of affinity up to and including the third degree arises between judges who are employed by the same court, the person by whose marriage such a relationship has arisen must accept a transfer to another position.

§. 55. An involuntary transfer may only be made to another judicial office of the same rank and salary; if the judge has not given cause for it in the manner described in Section 54, or if it takes place through no fault of his own (Section 53), he must be granted the prescribed transfer costs.

§. 56. Involuntary transfer may be effected only on the basis of a decision taken by the supreme court in a plenary session declaring that a case of transfer exists. The Court may make such a decision only if the Public Prosecutor applies to it, presenting an order to that effect issued to him by the Minister of Justice.

The application may also be made in the course of a disciplinary investigation pending before the court.

In the event of a transfer from the area of the Higher Tribunal to that of the Rhenish Court of Appeal and Cassation, or vice versa, both courts shall sit together.

§. 57. Before the application of the public prosecutor can be granted, the judge concerned must be requested to make a written statement on the application within a four-week period, with notification of the application, except in the case provided for in the second paragraph of section 56. No further proceedings shall take place.

### Fifth section. - Involuntary retirement.

§. 58. A judge who has become incapable of performing his official duties due to blindness, deafness or any other physical infirmity, or due to the weakening of his physical or mental powers, must be retired.

§. 59. If the judge does not seek retirement although the condition which renders him incapable of performing his official duties is permanent, the procedure prescribed in the following paragraphs shall apply.

§. 60. The judge or his curator, who shall be specially appointed for this purpose if necessary, shall be notified in writing by the presiding judge of the court of which he is a member, stating the reasons, that the case for retirement has arisen.

With regard to single judges, the president or director of the court of first instance in whose judicial district the single judge is employed shall have the power to do so; with regard to the presidents or directors of the courts of first instance, the first president of the court of appeal; with regard to the first presidents of the courts of appeal, the first president of the supreme court.

§. 61. The opening prescribed in the preceding paragraph shall be effected by the competent presiding judge ex officio or at the request of the public prosecutor.

If it is not made, the immediately superior court, or, if it is the First President of a Court of Appeal or a member of a supreme court, that court shall decide in its plenary session, ex officio or at the request of the public prosecutor, that it should be made, and in that case it must be made by the First President of the deciding court.

The First President of a supreme court may be notified of the opening only on the basis of a decision of that court, which shall then be executed by the legal deputy of the First President.

§. 62. If the judge or his curator does not voluntarily apply for retirement within six weeks from the date of the notice given to him in accordance with sections 60 or 61. If, in the case of a member of a supreme court or the first president of a court of appeal, or if a decision of the supreme court has been issued in accordance with §. 61, this court, and in all

other cases the court of appeal, after any counter-statement of the judge concerned has been submitted to it, must decide whether or not the proceedings are to be continued.

§. 63. If the court decides to continue the proceedings, its first president shall appoint a judge commissioner. The latter shall discuss the facts on the basis of which the retirement is to be justified, examine the necessary witnesses and experts on oath and, at the conclusion of the proceedings, hear the judge or his curator with his statement on the result of the discussion.

§. 64. The closed files shall be submitted to the court, which shall decide in its plenary session, after hearing the public prosecutor, whether the case for the retirement of the judge has been made out. The court may order in advance that the judge, the witnesses and the experts be heard orally.

§. 65. The decision shall not be subject to appeal. It shall be forwarded to the Minister of Justice, who, if the decision is that the case for retirement exists, shall take further steps.

§. 66. In the case of judges who are to be granted a pension in accordance with the regulations, retirement shall only take place with the granting of the pension in accordance with the regulations. They shall continue to receive their full salary until the end of the quarter following the month in which they were notified of the final decision to retire.

**Sixth section. - More detailed provisions concerning the dispute resolution authorities, the General Auditors and the auditors.**

§. 67. The provisions of this Ordinance shall apply subject to the following more detailed provisions:

1) to the presidents, conductors and councillors of the Revision College for Provincial Cultural Affairs, the General Commissions and agricultural government departments;

2) to the Auditor General, the other members of the Auditor General's Office and the auditors.

**Provisions due to the dispute authorities.**



§. 68. The provisions relating to the courts of first instance shall apply to the general commissions and agricultural government departments.

The appellate review board performs the duties of the courts of appeal.

The High Tribunal and its First President shall also exercise the powers vested in them in respect of the aforementioned dispute authorities.

§. 69. In the cases of SS. 26. and 32. the High Tribunal shall refer the case to a Court of Appeal.

§. 70. The involuntary transfer of a member of the Review Board to another post may be made to a Court of Appeal. The order to be submitted in accordance with section 56 shall be issued by the Minister of Justice and the Minister for Agricultural Affairs.

The decision shall also be sent to these ministers in the case of §. 65.

§. 71. The duties of the Public Prosecutor's Office at the Review Board shall be performed by the Public Prosecutor at the Court of Appeal in whose district the Review Board has its seat.

Provisions regarding the auditor general and auditors.

§. 72. The General Auditors' Office is the competent disciplinary court for the auditors

It also deals with disciplinary matters in the composition prescribed for its decisions.

It is authorized to impose final warnings, reprimands and fines of up to ten thalers on auditors without formal disciplinary proceedings.

§. 73. The duties prescribed in Section 16 of this Act shall be performed by the First President of the High Tribunal in respect of the Auditor General, and by the Auditor General in respect of the other members of the Auditor General's Office and the Auditors.

§. 74. The High Tribunal is the competent disciplinary court for the members of the Auditor General's Office.

Appeals against decisions of the General Auditor's Office and appeals against its decisions, insofar as one or the other is admissible, shall be lodged with the High Tribunal.

§. 75. The High Tribunal shall have the powers conferred on it by SS. 26, 28 and 32 shall also apply to the General Auditorate.

The case is referred to a court of appeal.

However, due to a lack of judges, the referral shall only take place if the quorum of members (§. 72.) is not present.

§. 76. The involuntary transfer of a member of the Auditor General may be made to a Court of Appeal. The decision as to whether the case of involuntary transfer exists shall be issued by the High Tribunal.

With regard to the auditors, this decision is the responsibility of the Auditor General.

If a divisional auditor has become unfit for field service, he may be transferred to an auditor position that does not require the ability to serve in the field.

The order to be submitted in accordance with §. 56. shall be issued by the Ministers of Justice and War.

§. 77. Involuntary retirement shall be decided by the Auditor General's Office with regard to auditors, and by the High Tribunal with regard to members of the Auditor General's Office.

The opening prescribed in §. 60. shall be carried out by the First President of the Supreme Tribunal in respect of the Auditor General, and by the Auditor General in respect of the other members of the Auditor General's Office and the Auditors.

The High Tribunal shall also have the powers conferred on it by §§. 61. to 63 with regard to the members of the Auditor General's Office and the Auditors.

In the case of §. 65, the decision shall be sent to the Ministers of Justice and War.

§. 78. The duties of the Public Prosecutor's Office at the Auditor General's Office shall be performed by an official to be designated by the Ministers of Justice and War who is qualified to hold the office of senior judge.

§. 79. With regard to the auditors, the provisions of sections 43 and 44 of the ordinance of October 21, 1841, shall remain in force (Law Gazette, p. 325).

The provisions of the Ordinance of September 24, 1826, No. 2. shall apply during the war.

#### Provisions for the district of Rhineland law.

§. 80. In the district of the Rhenish Court of Appeal at Cologne, the provisions of SS. 2. and 4. do not change the existing laws which threaten the transfer of official duty with fines of any kind, and certain transfers of official duty committed through negligence with penalties under common criminal law.

Prosecution for such acts will take place in the same way as before.

§. 81. In the same district, only punishment and proceedings in accordance with the provisions of this Ordinance shall take place for official offenses committed by investigating magistrates or justices of the peace as officers of the judicial police.

#### Transitional provisions.

§. 82. Investigations that have already been opened at the time of the promulgation of the present ordinance by way of ordinary criminal proceedings or disciplinary proceedings shall be completed in the previous manner. The investigation shall be deemed to have been opened when the accused has been questioned as such or summoned for questioning. The sentences passed or pronounced shall be enforced without regard to the provisions of this Ordinance.

§. 83. In the case of suspension from office (Sections 46 et seq.), the provisions of this Ordinance shall apply. An appeal against the continuation or revocation of a suspension already imposed by a court other than the

disciplinary court competent under the provisions of this Ordinance shall first be made to that disciplinary court.

All provisions contrary to this decree are repealed. Authenticated under Our Royal Signature and the Royal Seal.

Given Sanssouci, July 10, 1849.

(L. S.) Friedrich Wilhelm.

Gr. v. Brandenburg. v. Ladenberg. v. Manteuffel. v. Strotha.  
v. d. Hehdt. v. Nabe. Simons.

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**12. Ordinance concerning the misconduct of non-judicial  
officials, their transfer to another position or retirement. Of  
July 11, 1849. \*)**

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree, at the request of Our Ministry of State, on the basis of Article 105. of the Constitutional Charter, the following:

§. (1) The present Ordinance shall apply, subject to the limitations expressly set forth therein, to all civil servants in the direct or indirect service of the State who are not covered by the provisions of the Ordinance of July 10 of this year concerning judges. It shall not apply to clergymen and church officials.

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\*) Not yet revised by the chambers.

First section. - General provisions on official misconduct and its punishment.

Misconduct at all.

§. 2. Official misconduct is any breach of the duties imposed on the civil servant by his office.

These duties include that the civil servant, by his conduct in and out of office, proves himself worthy of the respect, reputation and trust which his profession demands.

### Official misconduct.

§. 3. Crimes against public office, for which punishment is imposed under the existing laws on the basis of judicial proceedings, are only those breaches of official duty which are threatened with a penalty under common criminal law, whether this consists of imprisonment or a more severe penalty, in permanent or temporary incapacity to hold public office, or in another permanent or temporary deprivation or restriction of civic rights, in a position under police supervision or in a fine the amount of which depends on the extent of the damage caused or the profit sought. police supervision or in such a fine, the amount of which depends on the extent of the damage caused or the profit sought. This provision shall apply irrespective of whether the act is punishable only by a penalty under ordinary criminal law or simultaneously by dismissal from office or another of the penalties specified in §. 5. nos. 1 and 2; it shall also apply in cases where dismissal from office is threatened as an aggravation of a fine under ordinary criminal law.

§. 4. The provision of §. 333. of the General Land Law, Part II, Title 20, shall not apply if the official has not committed a breach of his official duty with the intention of gaining advantage for himself or others or causing disadvantage to the state or others.

### Mere official misconduct.

§. 5. The following are mere official misconduct for which only disciplinary proceedings and punishment in accordance with the provisions of this Ordinance shall take place:

1) those which in the previous laws are only threatened with warning, reprimand, transfer, suspension, dismissal (loss of office, dismissal from office, removal from office, cassation), or where at the same time or exclusively a fine of a type other than that specified in §. 3. is threatened;

2) those who have been threatened with degradation in the previous laws, even if any other punishment is threatened at the same time;

3) those based solely on ignorance or negligence (error, oversight, carelessness, negligence, rashness)

4) the distance without leave or exceeding the leave;

5) all other transfers of official duty that are not provided for in the penal code.

§. 6. If the law imposes an obligation to make restitution or to pay damages or any other obligation under civil law in the case of mere misconduct, the action of the parties concerned shall be brought before the civil court.

§. 7. Insults or assaults committed by a civil servant in the course of his duties shall be punishable by the fine or imprisonment imposed for these offenses on the basis of the judicial proceedings. Whether a disciplinary penalty is also to be imposed on the civil servant shall be decided only by disciplinary proceedings.

The same applies if police officers tolerate the violation of police laws and do not report it for proper punishment.

#### Disciplinary and judicial proceedings for the same facts.

§. 8. Disciplinary proceedings shall not be excluded by the fact that the act which is the subject of the accusation constitutes a common crime or offense, a misdemeanour or a crime against public office (§. 3.), that a prosecution has been instituted for the same, that an acquittal has been obtained, or that such a sentence has been passed which was neither forfeiture of office nor entails the same by operation of law (§. 10.).

§. 9. In the course of a judicial investigation, disciplinary proceedings may not be initiated against the accused for the same facts unless it is urgently required by the interests of the service.

If, in the course of disciplinary proceedings, a judicial investigation is opened against the accused on the basis of the same facts, the disciplinary authority may order the suspension of the disciplinary proceedings, if necessary until the legal conclusion of the judicial proceedings.

### Loss of office as a result of other penalties.

§. 10. Sentencing to imprisonment or hard labour, to another prison sentence of one year or longer, to a more severe punishment, to permanent or temporary incapacity for public office, to any other permanent or temporary deprivation or restriction of civic rights, or to a position under police supervision, shall automatically result in the loss of office, and in the case of retired officials, the loss of pension, without this being specifically recognized.

### Unauthorized removal from office.

§. 11. A civil servant who absents himself from his office without the prescribed leave, or who exceeds the leave granted, shall forfeit his service income for the period of the unauthorized absence.

§. 12. If the unauthorized removal lasts longer than eight weeks, the civil servant has forfeited his or her dismissal.

If the official has been ordered to return to his or her post, the penalty of dismissal shall apply if four weeks have elapsed without result since the order was issued.

§. 13. Withdrawal of service income (§. 11.) shall be ordered by the authority which is to grant the leave. In the event of an objection, formal disciplinary proceedings shall take place.

§. 14. Dismissal from office may only be pronounced by way of formal disciplinary proceedings. It shall not be imposed if it appears that the official has been absent from his office through no fault of his own and at the same time has been unable to apply for leave or its extension.

§. 15. The initiation of disciplinary proceedings for unauthorized removal from office and dismissal before the expiry of the time limits (§. 12.) is not excluded if it appears to be justified by the particular circumstances.

### Service of summonses etc.

§. 16. The summons referred to in Section 12, as well as all other summonses, notices, service and subpoenas made in accordance with the

provisions of this Ordinance, shall be valid and shall cause the time limits to run if they are served on the person to whom they are addressed in person or at his or her place of residence at the place where he or she is legally required to reside.

### Disciplinary sanctions.

§. 17. Disciplinary sanctions consist of administrative penalties and removal from office.

§. 18. Administrative penalties are:

Warning,  
Reference,  
Fine.

§. 19. Removal from office may exist:

1) in a transfer to another office of the same rank, but with a reduction in salary and loss of entitlement to relocation expenses, or with one of both disadvantages.

This penalty only applies to civil servants in direct government service.

2) dismissal from office. This penalty automatically entails the loss of the title and pension entitlement; it is not specifically recognized.

§. 20. Which of the penalties specified in SS. 17. to 19. is to be applied shall be determined according to the greater or lesser seriousness of the official misconduct, taking into account the other conduct of the accused.

Dismissal from office must be effected in particular if the civil servant has neglected the duty of loyalty or has not exercised the courage required by his profession, or has been guilty of hostile partisanship against the state government.

### Second section. - Disciplinary proceedings.

#### Procedure for administrative penalties.



§. 21. Every superior is authorized to issue warnings and reprimands to his subordinates.

§. 22. With regard to the imposition of fines, the authority of superiors is limited as follows:

The head of those authorities under the provincial authorities may impose fines of up to three thalers on lower officials.

Other superiors of lower officials may only impose such fines to the extent that the power to impose fines is conferred on them by special laws or instructions. The same shall apply to heads of post offices with respect to their subordinates and to postal inspectors with respect to the lower officials of their district.

The provincial authorities are authorized to impose fines of up to thirty thalers on their subordinate officials.

The heads of the provincial authorities have the same authority with regard to the lower civil servants employed by the latter.

The ministers shall have the power to impose fines on all civil servants directly or indirectly subordinate to them up to the amount of their monthly salary, but up to the sum of thirty thalers on unpaid civil servants.

The Ministry of State determines which civil servants are to be counted as lower-level civil servants:

§. 23. Appeals against the imposition of administrative penalties may only be lodged with the superior authority.

As soon as the appeal is lodged, the authority that imposed the penalty must be notified.

#### Procedure for removal from office.

§. 24. Removal from office must be preceded by formal disciplinary proceedings. The latter shall consist of a written preliminary investigation to be conducted by a commissioner and an oral hearing in accordance with the following more detailed provisions.

§. 25. The initiation of disciplinary proceedings is ordered and the investigating commissioner is appointed:

1) if the case is to be decided by the disciplinary court (§. 26. No. 1.), by the minister who is superior to the accused.

However, if there is imminent danger, this order and appointment may be made provisionally by the head of the provincial authority of the department. The approval of the Minister shall then be obtained and, if the same is refused, the proceedings shall be discontinued.

2) In all other cases by the head of the authority which forms the deciding disciplinary authority (§. 26. No. 2.) or by the superior minister.

#### Deciding authorities of first instance.

§. 26. The competent disciplinary authorities of first instance are:

1) the Disciplinary Court at Berlin (p. 31.) with regard to those civil servants whose appointment requires the appointment, confirmation or approval of the King or the Ministers in accordance with the provisions in force at the time of the ordered initiation of the investigation.

2) The provincial authorities, as:

the governments,  
the provincial school colleges,  
the provincial tax offices,  
the Ober-Bergämter.

All civil servants employed by the provincial authorities or subordinate to them who are not included in No. 1 above belong before the provincial authorities.

The central administrative authorities under the ministers in branches of service for which no provincial authorities exist shall be equated with the provincial authorities.

§. 27. With regard to those categories of civil servants who are not included in the categories referred to in Section 26, the disciplinary authority shall be determined by a decision of the Ministry of State.

§. 28. The jurisdiction of the provincial authorities may be extended by the Ministry of State to individual categories of civil servants who are appointed or confirmed by the ministers but who are not members of a provincial authority in terms of budget.

§. 29. The Ministry of State may, at the request of the minister concerned or the accused, refer the handling of a disciplinary matter from one provincial authority to another if, in the opinion of the Disciplinary Court, there are grounds for doubting the impartiality of the competent disciplinary authority.

### Competence disputes.

§. 30. Disputes concerning the competence of the disciplinary authorities as such shall be decided by the Ministry of State after hearing the opinion of the Disciplinary Court.

§. 31. The Disciplinary Tribunal shall consist of a President and ten other members, at least four of whom must be members of the two supreme courts.

The members of the Disciplinary Court shall be appointed by the King for a term of three years.

A member who is appointed during this period shall only remain in office until the end of this period.

Retiring members may be reappointed.

§. 32. At least seven members, including the chairman, shall be required to participate in the Disciplinary Court in order to deal with disciplinary matters.

§. 33. In the case of the provincial authorities, disciplinary matters shall be dealt with in special plenary meetings, in which only the full-time members and those holding a full-time position shall participate. All those appointed to participate have full voting rights, even if the authority has no other collegial institution

### Preliminary examination.

§. 34. In the preliminary investigation, the accused shall be summoned and, if he appears, heard; witnesses shall be examined on oath and other evidence serving to clarify the case shall be obtained.

§. 35. Once the preliminary investigation has been concluded, the proceedings shall be sent to the authority that ordered the investigation to be initiated.

§. 36. The minister superior to the accused shall be authorized to discontinue further proceedings upon rejection of the preliminary investigation and, if appropriate, to impose only an administrative penalty.

If any other authority which has ordered the initiation of the investigation is of the opinion that the further proceedings should be discontinued, it shall report thereon to the Minister for his decision.

Oral hearing before the deciding authority of first instance.

§. 37. If the proceedings are not discontinued, a date shall be set for the oral hearing of the case, to which the accused shall be summoned, emphasizing the facts with which he is charged.

§. 38. The functions of the Public Prosecutor's Office shall be performed by an official designated by the Minister for this purpose.

§. 39. At the oral hearing, which shall take place in closed session, a speaker appointed by the chairman of the authority from among its members shall first give an account of the case as it emerges from the previous hearings.

The accused is questioned.

The official of the public prosecutor's office will then be heard with his presentation and motion, and the defendant in his defence.

The defendant has the last word.

§. 40. If the authority, at the request of the accused or of the public prosecutor, or even ex officio, deems it appropriate to hear one or more witnesses, whether by a commissioner or orally before the authority itself, or to obtain other means to clarify the matter, it shall issue the necessary order

and, if necessary, postpone the continuation of the case to another day, which shall be notified to the accused.

§. 41. The accused who appears may be assisted by an advocate or lawyer as counsel. The accused who does not appear may not be represented unless the deciding authority has permitted him to be represented by an advocate or lawyer in the summons or later. The authority shall be entitled at any time to subsequently order the personal appearance of the accused.

### Decision of the first instance.

§. 42. The decision, which must contain the reasons for it, shall be announced at the session in which the oral proceedings have been concluded or at one of the next sessions.

The decision may also be a mere administrative penalty.

§. 43. Minutes shall be taken of the oral proceedings, which must contain the names of those present and the essential moments of the proceedings. The minutes shall be signed by the chairman and the secretary.

§. 44. There is no right of appeal (restitution or opposition).

### Appeal to the Ministry of State.

§. 45. The decision may be appealed to the State Ministry subject to the following more detailed provisions:

The defendant is entitled to appeal against any decision pronouncing his removal from office; the public prosecutor against any final decision.

§. 46. The appeal shall be lodged with the authority that issued the decision to be challenged.

The time limit for this application is four weeks, beginning at the end of the day on which the decision was announced and, for the accused who was not present, at the end of the day on which he was served with the decision.

§. 47. The Ministry of State shall be seized of the whole case by the appeal, even if it has been lodged only by the public prosecutor or only by the accused, and even if it is directed only against individual provisions of

the decision, just as if the appeal had been lodged by both sides against the whole content of the decision.

The decision of the Ministry of State may also be to impose a fine.

§. 48. The State Ministry decides on the presentation of a speaker appointed by the Chairman.

§. If the appeal is lodged against the decision of a provincial authority, the Ministry of State may not take a decision until the opinion of the Disciplinary Court has been obtained.

The disciplinary court must hear the official of the public prosecutor's office in his or her submission and application before issuing its opinion.

He may order the defendant to be summoned and issue any other orders necessary to clarify the matter.

§. 50. If the decision or the opinion of the disciplinary tribunal is to acquit the accused, the Ministry of State may, if it finds the accused liable to prosecution, impose not the penalty of dismissal but only a lesser disciplinary penalty, or order temporary retirement (p. 94.).

§. 51. The decision of the Ministry of State by which removal from office is pronounced shall require the confirmation of the King if the official has been appointed or confirmed by the King.

### Third section. - Provisional removal from office.

#### Suspension by operation of law.

§. 52. The suspension of a civil servant from office shall take effect by operation of law:

1) if his arrest has been decided in criminal proceedings, or if a judgment has been passed against him which has not yet become final and which is forfeiture of office or entails such forfeiture by operation of law;

2) if a decision has been made in the disciplinary proceedings which is not yet legally binding and which is based on dismissal.

§. 53. In the case provided for in the preceding paragraph under number 1, the suspension shall cease automatically at the end of the tenth day after the order of arrest has been revoked or after the judgment of a higher instance by which the accused official is sentenced to a penalty other than that specified has become final, unless the suspension is decided by the Office by way of disciplinary proceedings before the expiry of this period.

If the final judgment is a custodial sentence, the suspension lasts until the judgment has been executed. If the execution of the sentence is stayed or interrupted through no fault of the convicted person, there shall be no reduction in salary (§. 55.) for the period of the stay or interruption.

In the case referred to in point 2, the suspension shall last until the decision in the disciplinary matter becomes final.

#### Suspension by decree.

§. 54. The authority authorized to initiate the disciplinary investigation may order the suspension as soon as judicial criminal proceedings are initiated against the official or the initiation of a disciplinary investigation is ordered, or shortly thereafter in the course of the proceedings.

#### Influence of suspension on service income.

§. 55. The suspended civil servant shall retain half of his service income during the suspension; but if the loss of office has been imposed on him in the first instance, or if this loss is a legal consequence of the judgment rendered, he shall, from the time of the publication of the judgment or decision until the final judgment in the case, be paid only the amount necessary for his subsistence, which may never exceed half of his service income.

No account is to be taken of the special amounts set for service costs when calculating half of the service income.

The costs of representing the accused and of the investigation proceedings are to be paid from the retained part of the service income.

§. 56. The part of the income not used for the costs (Section 55) shall be paid to the civil servant if the proceedings did not result in the loss of office.

The civil servant is not entitled to reminders about the use of the income; however, he must be provided with evidence of this use on request.

§. 57. If the civil servant is acquitted, the retained part of the service income must be paid to him in full.

#### Provisional prohibition of the exercise of official duties.

§. 58. If there is imminent danger, a civil servant may also be temporarily prohibited from carrying out his official duties by superiors who are not authorized to order his suspension; however, this must be reported immediately to the higher authority.

#### Fourth section. - More detailed and special provisions relating to officials of the administration of justice.

§. 59. The following more detailed provisions shall apply with regard to officials of the judicial administration who do not hold judicial office.

##### 1. Administrative penalties: against various judicial officials.

§. 60. The Minister of Justice may impose administrative penalties of any kind (Sections 18 and 22) on all civil servants, subject to the restrictions contained in SS. 72. to 75.

Officials from the public prosecutor's office and the judicial police.

§. 61. The public prosecutor at a court of appeal (senior public prosecutor, procurator general) is authorized to issue warnings and reprimands against all public prosecution officials employed in the district of the court of appeal, and to issue warnings, reprimands and fines of up to ten thalers against public prosecution officials at the police courts (police prosecutors) and against judicial police officials.

Articles 280. 281. 282. of the Rhineland Code of Criminal Procedure are repealed.

§. 62. The public prosecutor at a court of first instance (Oberprokurator) is authorized to issue warnings to all public prosecutors and judicial police officers in the district of that court.



## Office and sub-officials.

§. 63. The superiors who, apart from the Minister of Justice, are authorized to impose administrative penalties *ex officio* or at the request of the Public Prosecutor against bureau and sub-officials of the courts, namely the officials of the secretariat, the calculating office, the administration of monies and deposits, the registry, the registry and the execution enforcement are:

1) The first president of a supreme court with regard to the officials employed by the same. The fine may not exceed the sum of thirty thalers.

2) The First President of a Court of Appeal in respect of the officials within the district of the Court of Appeal, with the same restriction in respect of fines.

3) The president or director of a court of first instance in respect of officials within the district of that court. The fine may not exceed the sum of ten thalers.

4) The conductor of a district court deputation with regard to the officials employed by the same. The fine may not exceed the sum of three thalers.

5) The single judge in respect of the officials employed by the court (the court deputation) with the same restriction in respect of the fine.

## Court clerk, bailiff at the Rhenish courts.

§. 64. With regard to the clerks and bailiffs employed by the Rhenish Court of Appeal and Cassation and by the other Rhenish courts, the provisions of §. 63. shall apply with the modification that fines shall not be imposed on them and that the power to issue warnings and reprimands against bailiffs shall be vested only in the officials of the Public Prosecutor's Office, namely:

1) The Procurator General at the Rhenish Court of Revision and Cassation with regard to the bailiffs employed by this court.

2) The Procurator General at the Court of Appeal in respect of those who are employed in the district of the Court of Appeal.

3) The chief procurator of a regional court in respect of those who are employed in the district of that court.

Floor secretaries.

§. 65. The authority to impose administrative penalties on floor secretaries is vested in the Board of Directors:

1) The general procurators against those who are employed in their office, the general procurator at the Court of Appeal also against those who are employed in the office of a senior procurator. The fine may not exceed the sum of thirty thalers.

2) The chief procurator at a district court against those who are employed in his parquet. The fine may not exceed the sum of ten thalers.

Office and sub-officials at the General Commissions and the Audit Board.

§. 66. The conductor of a general commission has the power to impose warnings, reprimands and fines of up to thirty thalers on the officials employed by the commission and in its district.

The President of the Audit Board has the same authority with regard to the civil servants employed by this authority.

Special commissions.

§. 67. The general commissions and agricultural government departments are authorized to impose final warnings, reprimands and fines of up to thirty thalers on the special commissioners.

Bureaux and sub-officials at the Auditor General's Office and its sub-authorities.

§. 68. The Auditor General may impose warnings, reprimands and fines of up to thirty thalers on officials employed by the Auditor General or subordinate to this authority.

Appeal against administrative penalties.

§. 69. The appeal against administrative penalties is possible:

- 1) in the cases of §. 63. No. 1. and 2. to the Minister of Justice;
- 2) in the other cases of §. 63. to the First President of the Court of Appeal, and by his order to the Minister of Justice;
- 3) of the orders of an official of the Public Prosecutor's Office to the senior official of the same, and of his order to the Minister of Justice;
- 4) in the cases of §. 66. to the Minister for Agricultural Affairs;
- 5) in the cases of §. 68. to the Minister of War.

## 2. Removal from office. Public prosecutors and officers of the judicial police.

§. 70. The provisions on removal from office (Section 25 No. 1., Section 26 et seq.) shall apply to public prosecutors. With regard to police attorneys and officers of the judicial police, their other official capacity shall be decisive for the jurisdiction of the disciplinary authority.

### Office and sub-officials.

§. 71. The following modifications shall apply with regard to bureaux and sub-officers at the courts (Section 63):

- 1) The order to initiate disciplinary proceedings, including in the case of officials appointed by the Minister of Justice, shall be made by the Court of Appeal, and the appointment of the investigating commissioner shall be made by the First President of the Court, without prejudice to the power of the Minister of Justice to make such order and appointment.
- 2) The disciplinary authority of first instance is the Court of Appeal, in the section usually presided over by the First President.
- 3) The public prosecutor at the Court of Appeal may request the initiation of disciplinary proceedings. Prior to the conclusion of the borough investigation, the files shall be submitted to him for the submission of his application.

4) If the official is employed by or in the district of a General Commission, the powers conferred on the Courts of Appeal and their First Presidents under Nos. 1 and 2 shall be exercised by the General Commission and its Director, and if the official is employed by the Review Board, by that authority and its President, without prejudice to the power of the Minister for Agricultural Affairs to order the opening of the inquiry and to appoint the Commissioner.

5) If the officer is employed by the Auditor-General or is subordinate to him, the powers mentioned under Nos. 1 and 2 shall be exercised by the Auditor-General and the Auditor-General, without prejudice to the power of the Minister of War to order the opening of the investigation and to appoint the Commissioner.

#### Special provisions for court clerks and bailiffs.

§. 72. If a court clerk or bailiff in the district of the Rhenish Court of Appeal in Cologne has committed an official offense which is punishable by a penalty more severe than a reprimand, the procedure prescribed by the ordinance of July 21, 1826, shall take place.

The power of the courts to impose any of the penalties set out in §. 3. of that Ordinance and to adjudicate on official misconduct occurring at the hearing shall not be changed.

Sections 2 to 10, 52 to 54 of the present Ordinance shall also apply, and sections 11 to 16 and 55 to 57 shall also apply in respect of clerks of court. However, the order of suspension from office (p. 54), which may be made on the written application of the public prosecutor, shall be made only by the court which is to rule on the disciplinary matter, subject to the right of appeal to the Court of Appeal from an order of the Regional Court.

#### Special provisions for advocates, lawyers and notaries.

§. 73. Only the provisions of sections 2 to 10 and sections 52 to 54 of this Ordinance shall apply to advocates, lawyers and notaries. Otherwise the following provisions shall apply (§§. 74. to 83).

§. 74. With regard to the notaries in the district of the Rhenish Court of Appeal in Cologne, the decree of April 25, 1822 shall remain in force.

The provisions of the last paragraph of §. 72. shall apply with regard to suspension from office.

§. 75. The ordinance of June 7, 1844, concerning the exercise of discipline over advocates and attorneys, and the ordinance of April 30, 1847, concerning the formation of a council of honor, shall remain in force with the following modifications.

§. 76. In the cases referred to in p. 9 of the present Ordinance, an appeal may be lodged with the Court of Appeal and, in the district of the Rhenish Court of Appeal, with the Disciplinary Tribunal.

The suspension from office ordered by a Disciplinary Board in accordance with §. 55. shall require the confirmation of the Disciplinary Board, in respect of which a decision shall be made on the written application of the Procurator General. The Disciplinary Tribunal may also order suspension from office on the written application of the Procurator General.

§. 77. If a Disciplinary Board or a Council of Honor fails to initiate a disciplinary investigation in cases where it should take place, or if it delays the completion of an initiated investigation in a manner detrimental to the service, the Court of Appeal may, by a decision taken in plenary session, refer the matter to itself for investigation and decision.

The First President may convene a plenary meeting for the purpose of taking a decision thereon; it must be convened if a division of the Court so requests, or if the Public Prosecutor submits a written request supported by reasons.

§. 78. If the Court of Appeal takes up the case, its First President shall appoint a judge to conduct the preliminary investigation, and the provisions of the second and third sections of the Ordinance of July 10 of this year concerning judges shall apply.

The public prosecutor may appeal to the court of appeal against any final judgment, and the accused against any judgment imposing a fine of more than one hundred thalers or dismissal from office, or imposing suspension or loss of the capacity of advocate or solicitor.

§. 79. As long as there is no honorary council or disciplinary council for lawyers at the supreme courts, disciplinary matters shall be dealt with by the

supreme court in accordance with the provisions of the second and third sections of the Ordinance of July 10 of this year concerning judges.

§. 80. With regard to disciplinary sanctions, the ordinance of April 30, 1847, shall apply in cases of SS. 78, 79 and 81, and the ordinance of June 7, 1844, shall apply to the Rhenish Court of Revision and Cassation and to the other Rhenish courts.

#### Misconduct by advocates and lawyers at meetings.

§. 81. If the commission of offenses by an advocate or lawyer occurs in the session of a supreme court, a court of appeal, a jury court, a district court, a county court or a municipal court, the court holding the session, even if it is only a division of the whole court, shall have the power to decide on these offenses immediately or in a continued session. The court, or the division thereof, has the same power in respect of offenses determined at the hearing, if they can be adjudicated immediately.

§. 82. An appeal shall lie from judgments given by a court other than a supreme court in accordance with the provisions contained in the second paragraph of section 78.

Otherwise, SS. 42. and following of the second and third section of the decree of July 10, d. 3. concerning the judges shall apply. Section 1 of the ordinance of June 7, 1844 is repealed.

#### Performing the duties of a lawyer, notary, bailiff.

§. 83. If a lawyer, a notary or a bailiff has become incapable of performing his official duties due to blindness, deafness or any other physical infirmity, or due to the weakening of his physical or mental powers, and if this condition is permanent, the State Attorney shall request him or his curator, to be appointed if necessary, to resign from office before the Court of Appeal.

If no declaration is received within six weeks of this request, or if an objection is made, the Court of Appeal, in the composition prescribed by §. 25. of the Ordinance of July 10, b. 3, after the procedure prescribed in §. 63. of the same ordinance and, if appropriate, the procedure authorized in the final version of §. 64. has taken place, shall decide finally, after hearing the public prosecutor, whether the case of resignation from office exists.

If the court decides that this case exists, the Minister of Justice may declare the position closed.

#### Fifth section. - Special provisions relating to municipal officials.

§. 84. The following special provision shall apply to municipal officials who are neither appointed nor confirmed by the King or the district government:

In addition to the President of the district government, the authority responsible for appointing or confirming civil servants may, if there are grounds for formal disciplinary proceedings, order the initiation of such proceedings and appoint the investigating commissioner.

Once the preliminary investigation has been completed, the files are sent to the President of the District Government.

#### Sixth section. - Special provisions relating to military officers.

§. 85. With regard to military officers (Bellage A. to the Military Penal Code) and civil servants of the military administration, the military commandant's office is the decisive disciplinary authority of first instance (p. 26. No. 2.) if the accused is a subordinate officer.

§. If the officer is not subordinate to the Military Intendant, the commanding general of the army corps shall order the initiation of the investigation and appoint the commissioner. The decisive disciplinary authority of first instance is the Military Disciplinary Commission.

§. 87. The Military Disciplinary Commission shall have its seat at the garrison of the General Command and shall consist, for each army corps, of a colonel as chairman and six other members, three of whom shall be staff officers, captains or cavalry captains, the others senior military administration officials. If the accused is a military doctor, the last three members of the commission shall always be senior military doctors. The members of the commission shall be appointed by the Minister of War.

§. 88. The duties of the Public Prosecutor's Office at the Military Intendant's Offices and Military Disciplinary Commissions shall be performed by the Corps Auditor or another auditor designated by the Minister of War.

§. 89. With regard to the imposition of disciplinary sanctions on military officers other than removal from office, the special provisions relating to such officers shall apply.

The same applies to the suspension of all military administration officials in the event of war.

**Seventh section. - Special provisions relating to the dismissal of civil servants employed on revocation, trainee teachers, etc.**

§. 90. Civil servants who are employed on probation, on notice or otherwise on revocation may be dismissed without formal disciplinary proceedings by the authority that appointed them.

If they were previously employed in another office without such a reservation, dismissal from the office cannot be imposed without formal disciplinary proceedings.

In all cases, the civil servant dismissed on the grounds of termination shall be granted his full salary until the expiry of the notice period.

§. 91. Trainees or trainee teachers who show themselves to be unworthy of remaining in the service due to their faulty conduct, or who do not progress properly in their training, may be dismissed from the service by the superior minister, after hearing the heads of the provincial service authority, without further proceedings.

§. 92. With regard to the dismissal of supernumeraries and other persons employed by the authorities for the purpose of learning the service, the special provisions relating thereto shall apply.

§. 93. With regard to clerks, messengers, castellans and other servants of the same category or those who are only assigned to mechanical services and who are employed by the supreme administrative authorities or in those branches of the administration where there are no provincial service authorities, the Minister shall make the final decision after hearing the accused and on the presentation of two advisers, who must always include a legal adviser or, if no such adviser is employed by the administrative authority, a councillor from the Ministry of Justice.



Eighth section. - Orders in the interests of the service which are not the subject of disciplinary proceedings.

Transfer without penalty, waiting allowance, pension.

§. 94. The orders referred to below, which may be made in the interests of the service, are not subject to disciplinary proceedings, subject to the case provided for in Section 50:

1) Transfer to another office of no lesser rank and salary, with reimbursement of relocation expenses in accordance with the regulations.

It is not to be regarded as a reduction in income if the opportunity to administer ancillary offices is withdrawn, or if the relationship between the income specially set aside for official expenses and these expenses themselves ceases to exist.

2) Temporary retirement with the granting of a waiting allowance. The provisions of the ordinances of June 14 and October 24, 1848 are to be observed.

In addition to the case provided for therein, the civil servants named below may be temporarily retired at any time by royal decree with the granting of the prescribed waiting allowance:

Undersecretaries of State,  
Ministerial Directors,  
Chief Presidents,  
District Presidents and Vice Presidents,  
Officials of the public prosecutor's office at the courts,  
Head of the Royal Police Authorities,  
District councils;

also the envoys and other diplomatic agents.

Waiting allowance recipients who were employed in accordance with the budget at the time of the promulgation of the constitutional document shall be given preference when filling vacant positions for which they are suitable.

3) Full retirement with the granting of the prescribed pension.

### Full retirement.

§. 95. Full retirement shall take place if the civil servant has become incapable of fulfilling his official duties due to blindness, deafness or any other physical infirmity, or due to the weakening of his physical or mental powers.

§. 196. If the civil servant does not seek retirement, although the condition which renders him incapable of fulfilling his official duties is a permanent one, the superior service authority shall inform him or his curator, who shall be specially appointed for this purpose if necessary, that the case of his retirement has arisen, stating the amount of pension to be granted.

§. 97. Within six weeks of such notification (Section 96), the civil servant may submit his objections to the superior service authority. If this has been done, the proceedings shall be submitted to the superior minister, who shall decide on the retirement, unless the civil servant has been appointed by the King.

The civil servant has the right to appeal against this decision to the State Ministry within four weeks of receiving the decision.

Notwithstanding the right of appeal, the civil servant may be temporarily removed from further office by the Minister.

If the official is appointed by the King, the decision shall be made by the King at the request of the Ministry of State.

§. 98. A civil servant who has been ordered to retire shall continue to receive his full salary until the end of the quarter following the month in which he was notified of the Minister's or the King's decision.

§. 99. If the civil servant has not raised any objections to the opening made to him (Section 96) within six weeks, the order shall be made in the same way as if he had applied for his pension himself.

The Minister shall be entitled to make the decision and payment of the full salary shall continue until the date specified in Section 98.

§. 100. If a civil servant has become unfit for duty before the date on which he would have become entitled to a pension, he may be retired against

his will only if the forms prescribed for the disciplinary investigation are observed.

However, if it is deemed appropriate to grant the civil servant a pension in the amount to which he would be entitled on reaching the envisaged date, he may be retired in accordance with the provisions of FF. 96-99.

§. 101. The above provisions on temporary and full retirement shall apply only to civil servants in direct government service.

With regard to indirect civil servants, the existing provisions concerning their retirement shall remain in force.

§. 102. The provisions of the present Ordinance shall also apply in respect of civil servants who have been placed on disposition or temporarily retired.

#### Special provisions for the district of Rhineland law.

§. 103. In the district of the Rhenish Court of Appeal at Cologne, the provisions of Sections 3 and 5 do not change the existing laws which threaten the transfer of official duty with fines of any kind, and certain transfers of official duty committed through negligence with penalties under common criminal law.

Prosecution for such acts will take place in the same way as before.

#### Transitional provisions.

§. 104. Judicial investigations that have already been opened at the time of promulgation of the present ordinance shall be completed in the previous manner. The investigation shall be deemed to have been opened when the accused has been questioned as such or summoned for questioning. The sentences passed or to be passed shall be enforced without regard to the provisions of this Ordinance.

Disciplinary investigations that have already been initiated shall be completed in the same way as before until the preliminary investigation has been concluded. In all other respects, the provisions of this Ordinance shall apply to the proceedings.

§. 105. All provisions contrary to this decree are repealed. Authenticated under Our Royal Signature and the Royal Seal.

Given Sanssouci, July 11, 1849.

(L. S.) Friedrich Wilhelm.

Gr. v. Brandenburg. v. Ladenberg. v. Manteuffel. v. Strotha.

v. d. Hehdt. v. Habe. Simons.

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### **13. Act concerning the determination of the standard prices and standard market rates to be observed when redeeming real charges. From November 19, 1849.**

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree in application of article 40. of the constitutional charter for the whole extent of the monarchy, with the exception of the parts of the country situated on the left bank of the Rhine, with the consent of the chambers, as follows:

§. 1. In order to speed up the implementation of the law to be enacted for the redemption of real burdens and the regulation of landlord and farmer relations, standard prices and standard market rents are to be determined now.

§. 2. Appropriate districts shall be determined by the settlement authority to determine these normal prices and the normal market rates.

A commission shall be formed for each such district, consisting of several knowledgeable residents of the district to be elected in accordance with §. 3. and a chairman to be appointed by the settlement authority without voting rights.

This commission shall, on the basis of its investigations, make proposals to the settlement authority on the price districts to be formed in the district,

on the normal prices for each of these districts and on the normal market prices to be adopted.

The Disputes Settlement Authority shall confirm these proposals or decide if the members of the Commission are unable to reach an agreement. The members of the Commission have the right of appeal against this decision to the Review Board for Provincial Cultural Matters, which they must lodge with the Disputes Settlement Authority within three weeks of the date of publication. The Review Board shall make the final decision.

§. 3. The following rules shall apply when electing the members of the Commission to be drawn from the district residents:

1) Half of the number of these persons is chosen by the obligated landowners, the other half by the entitled persons.

2) If the district comprises only one rural district, an elector shall be elected in each municipality of the district, under the direction of the municipal board, by the owners of the land subject to real charges. All the electors of the district shall then be summoned by the district board and, under the chairmanship of the latter, those present shall elect two or more members to the district commission at the discretion of the settlement authority.

The authorized persons in the district, on the other hand, directly elect the same number of commission members under the chairmanship of the district executive committee.

3) If the district comprises several rural districts, two members shall be elected for the commission in each of them, both by the obligated and the entitled parties, in the manner described under No. 2.

4) All such elections shall be by an absolute majority of the votes cast by those present, in accordance with the election regulations of May 31, c., for the election of deputies.

5) The settlement authority shall be responsible for examining and confirming the elections.

6) The right to elect the Commission members for the Barthel who has refused or failed to elect them shall also pass to this authority.

§. 4. The commissions shall determine the normal prices for the cases specified below, taking into account the following general aspects.

#### A. For services.

1) If the services are determined by days, then both the instep and manual services must be taken into consideration:

- a) the duration of the work,
- b) the nature of the work,
- c) the seasons in which such work is to be performed,
- d) the nature of the labour force commonly used in the area.

2) For services that are not determined according to days, standard saws are also determined with regard to the softs for keeping a team, servants and day labourers.

#### B. For solid deliveries in grains.

1) Fixed levies in grains are understood to mean only those levies which recur annually or at other specified periods and which are paid in specified quantities in grains of stalks and other crops which have a general market price;

2) The value of these levies is to be determined according to the Martini market prices which result on average from the twenty-four years prior to the provocation, if the two most expensive and two cheapest of these years are excluded.

3) The Martini market price is understood to be the average price of the fifteen days in the middle of which Martini Day falls;

4) For those areas where the busiest grazing traffic takes place at a time of year other than around St. Martin's Day, a different time may be determined in the manner described in §. 2. and 3;

5) the market plan, the prices of which are to be used as a basis, shall be determined in accordance with the provisions of §. 2. and 3;

6) if a region has no regular grain markets, a real market place as close as possible to it shall be designated. The prices of this market place shall be

compared with the prices of that region in the twenty-four years prior to the promulgation of the present law, with the two most expensive and the two cheapest years omitted, and a permanent normal ratio of the two prices shall be calculated from this.

The price determinations to be made for that region are then based on the price of the assumed market place and increased or decreased according to the permanently determined normal ratio;

7) If a district in which a real market place is located is so extensive that in its more remote parts the prices tend to be regularly lower or higher than at the market place itself, the whole district shall be divided into smaller districts and a permanent normal ratio to the price of the market place shall be determined for each of them;

8) If no prices are recorded for certain types of grains at a market place (No. 5.), then the duties existing in such types of grains must be estimated in accordance with the following section C.

#### C. In the case of fixed levies in kind not consisting of grains.

For fixed taxes in kind not consisting of grains, which recur annually, but excluding taxes on wine, standard prices are also applied. As a rule, the prices of the previous twenty years shall be taken into account when determining these prices, and in the case of items whose quality may be different, it shall be assumed that the levy is to be paid in the lower quality.

#### D. For other charges and services.

The annual value of the obligation to keep seed cattle and to feed cattle is determined on the basis of normal prices.

Such standard prices shall be determined for each head of suckler cattle in the case of the obligation to keep seed cattle and for each head of cattle to be fed in accordance with §. 2. and 3 in the case of the obligation to feed cattle.

#### Considerations.

Normal prices are also determined for the annual value of the consideration of the entitled persons in accordance with the above

provisions. However, this does not apply to such consideration and obligations whose annulment is subject to the provisions of the *Gemeinheitstheilungs-Ordnung* of June 7, 1821.

§. 5. The elected members of the District Commission receive 1 Rthlr. 15 Sgr. per diem and 10 gr. per mile in travel expenses from the state coffers.

The district residents shall not be entitled to compensation for travel and other expenses incurred in connection with the election of members of the district commissions.

§. 6. If, in individual districts, charges and services for the redemption of which standard prices are to be determined in accordance with the present law no longer exist at all or only to a very small extent, the determination of standard prices may be omitted in such districts with the approval of the Ministry of Agricultural Affairs.

§. 7. The Ministry of Agricultural Affairs is charged with the implementation of the present Act.

Authenticated under Our Supreme Signature and the Royal Seal.

Given Sanssouci, November 19, 1849.

(L. S.) Friedrich Wilhelm.

Count v. Brandenburg. v. Ladenberg. v. Manteuffel. v. Strotha. v. d. Heydt. v. Rabe. Simons. v. Schleinitz.

#### **14. Act concerning the incitement of persons of military rank to disobedience. From November 19, 1849.**

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree, with the consent of the Chambers, the following:

Whoever incites or provokes a person of the military rank, be it of the line or the army, not to obey the order of the superior, whoever in particular incites or provokes a person who belongs to the military rank on leave not to obey the conscription order, shall be punished with imprisonment from six weeks to two years.



This provision shall apply whether the incitement or inducement was made by word or writing or by any other means, and whether it was successful or not. If the incitement or inducement combines the characteristics of an offense that is punishable by law with a more severe penalty, this penalty alone shall be imposed.

This Act replaces the Ordinance of the same name of May 23, 1849.  
Duly signed under Our Supreme Signature and with the Royal Seal attached.

Given Sanssouci, November 19, 1849.

(L. S.) Friedrich Wilhelm.

Count v. Brandenburg. v. Ladenberg. v. Manteuffel. v.  
Strotha. v. d. Heydt. v. Rabe. Simons. - v. Schleinitz.

### **15. Act concerning the reduction of the letter postage tax. From December 21, 1849.**

We Frederick William, by the Grace of God, King of Prussia-etc. etc.  
decree, at the request of Our Ministry of State and with the consent of both  
Houses, the following with regard to the reduction of postage rates for  
letters:

§. 1. The letter postage for correspondence exchanged within the  
Prussian postal territory shall be as follows:

a) according to the distance:

under and up to 10 miles . . . . .	1	Sgr.
over 10 to 20 miles . . . . .	2	=
and at all other distances . . . . .	3	=
for the simple letter;		

b) according to weight;

under 1 Loth \* customs weight (1, 14 Loth Prussian, decree of October  
31, 1839., law collection p. 325.) for the simple letter.

from	1	Loth to	2	Loth	twice as much,	
=	2	=	=	3	=	three times,
=	3	=	=	4	=	four times,
=	4	=	=	8	=	five times,
=	8	=	=	16	=	six times,

Postage, until the postage according to the parcel rate is more.

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\* Note: The Lot (formerly also written Loth) was a unit of measurement of mass, which was mainly used in German-speaking states of the Holy Roman Empire and in Scandinavia. It was mostly set at between 14 g and 18 g. It was replaced in the 1870's by the metric unit of measurement, the gramme.

§. 2. The postal administration is authorized to determine the Prussian postage in the agreements to be concluded with foreign postal authorities according to the ratio of the postage rate prescribed in §. 1, insofar as the foreign postage applicable to the correspondence in question is standardized according to approximately the same rates.

§. 3. The postal administration shall initiate the production and sale of postmarks by means of which the franking of letters can be effected by affixing them to the letter in accordance with the tariff. Further instructions regarding the use of such stamps, as well as the discount to be granted, shall be issued by the said administration in the form of regulations.

§. 4. For all types of mail not belonging to correspondence, for which the letter postage tare is the basis for charging postage, the tare introduced by the present law shall replace the previous letter postage tare.

§. 5. An order fee for parcel and money consignments is to be charged for each address or banknote, as well as for each letter.

§. 6. The present law shall enter into force on January 1, 1850.

Authenticated under Our Supreme Signature and the Royal Seal.

Given Bellevue, December 21, 1849.

(L. S.) Friedrich Wilhelm.

Count of Brandenburg. v. Ladenberg. v. Manteuffel. v. Strotha.

v. d. Heydt. v. Rabe. Simons. v. Schleinitz.

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**16. Act concerning the abolition of the compulsory insertion of intelligence and the official intelligence gazettes in favour of the Military Orphanage in Potsdam. From December 21, 1849.**

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree, with the consent of the Chambers, the following:

§. 1. The compulsory insertion of the intelligentsia in favour of the Military Orphanage in Potsdam will be completely abolished as of January 1, 1850.

§. 2. From the same time (§. 1.) the official publication of gazettes shall cease everywhere. The Minister of the Interior is authorized, if it proves expedient, to establish a special official gazette and gazette for Berlin.

§. 3. In all cases in which the law prescribes an announcement through the Intelligence Gazette, this will be replaced by an announcement through the public gazette of the official gazette as of January 1, 1850.

Where the publication of such announcements is prescribed both by the intelligence sheet and by the gazette, publication by the latter is sufficient.

§. 4. The Military Orphanage at Potsdam shall be paid an annual compensation pension of forty thousand thalers from January 1, 1850, from the state treasury for the deprivation of the income hitherto due to it from the compulsory internment of the intelligentsia and the publication of intelligence journals.

The state also assumes any compensation to be granted to civil servants and other interested parties as a result of the abolition of the previous compulsory intelligence insertion and intelligence publication system.

Authenticated under Our Supreme Signature and the Royal Seal.

Given Bellevue, December 21, 1849.

(L. S.) Friedrich Wilhelm.

Gr. v. Brandenburg. v. Ladenberg. v. Manteuffel. v. Strotha.  
v. d. Heydt. v. Rabe. Simons. v. Schleinitz.

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## **17. Constitutional Charter for the Prussian State. From January 31, 1850. \*)**

The Prussian state had become constitutional in March 1848 without an actual constitution having been established. Although the General Land Law already contained individual provisions on the rights and duties of the head of state, civil servants and citizens in general, they did not form a coherent whole anywhere and presupposed the absolute state. The National Assembly met on May 22, 1848., on the basis of the decree of April 8, to discuss the constitution and agree it with the Crown. By Royal Message of May 20, 1848., a draft of the Constitution consisting of 84 paragraphs prepared by the Camphausen Ministry was submitted to the National Assembly, which, however, was rejected by the Assembly in its entirety and led the Assembly to the decision to have a new draft prepared by a commission. This commission, consisting of 24 members under the chairmanship of Privy Councillor Waldeck, began its work on June 17, 1848., and completed the draft in 28 sessions by July 26, 1848. The deliberations on the Commission's report then began in the plenary session of the Assembly. However, these did not come to an end, as on December 5 the Assembly was dissolved and the Crown issued a constitutional charter. In this octroyed constitution, the work of the National Assembly had been largely used, but there were considerable amendments in individual paragraphs, especially in Articles 105 and 108. The chambers convened in February 1850. brought about a complete revision of the constitutional document of December 5, 1848. The work of the chambers was not, however, approved outright by the Crown, but the latter demanded various concessions in the well-known 15 articles of the Royal Message of January 7, 1850, namely the introduction of a pairie and a state court. These concessions were finally approved by the Chambers, and thus the following constitutional document was created, which was solemnly sworn by the King on February 6, 1850.

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\*) Compare the origin of each individual article of the Constitution:

1) the work of Appellate Court Council v. Rönne on the constitution of January 31, 1850.

2) Rauer, the minutes of the Constitutional Commission of the National Assembly. Berlin 1849, with Heymann.

We, Frederick William by the Grace of God, King of Prussia etc. etc. hereby announce and inform you that, after the Constitution of the Prussian State promulgated by us on December 5, 1848., subject to revision in the ordinary course of legislation and recognized by both Houses of Our Kingdom, has been subjected to the revision ordered therein, We have finally established the Constitution in agreement with both Houses.

We therefore proclaim the same as a fundamental law of the state, as follows:

### Title I - From the national territory.

Art. 1. All parts of the Monarchy in their present extent shall constitute the Prussian territory.

Art. 2. The boundaries of this territory may be altered only by law.

### Title II - Of the rights of the Prussians.

Art. 3. The Constitution and the law shall determine the conditions under which the status of Prussian and the rights of citizenship are acquired, exercised and lost.

Art. 4. All Prussians are equal before the law. There shall be no privileges of rank. Public offices are equally accessible to all those qualified for them, subject to the conditions laid down by law.

Art. 5. Personal liberty is guaranteed. The conditions and forms under which a restriction thereof, in particular arrest, is permissible shall be determined by law.

Art. 6. The home is inviolable. Entry into it and searches, as well as the seizure of letters and papers, are permitted only in the cases and forms provided by law.

Art 7. No one may be deprived of his lawful judge. Courts of exception and extraordinary commissions are inadmissible.

Art. 8. Penalties may only be threatened or imposed in accordance with the law.

Art. 9. Property is inviolable. It may be withdrawn or restricted only for reasons of public welfare against prior compensation, which in urgent cases shall be determined at least provisionally, in accordance with the law.

Art. 10. Civil death and the penalty of confiscation of property shall not apply.

Art. 11. The freedom of emigration may be restricted by the state only with regard to compulsory military service. Deduction fees may not be levied.

Art. 12. The freedom of religious confession, of association in religious societies (Art. 30. and 31.) and of common domestic and public religious practice shall be guaranteed. The enjoyment of civil and civic rights is independent of religious denomination. Civil and civic duties may not be impaired by the exercise of religious freedom.

Art. 13. Religious societies, as well as ecclesiastical societies, which have no corporate rights, may obtain these rights only by special laws.

Art. 14. The Christian religion shall be the basis for those institutions of the State which are connected with the practice of religion, without prejudice to the freedom of religion guaranteed in Art. 12.

Art. 15. The Protestant and Roman Catholic Churches, as well as every other religious society, shall organize and administer their affairs independently and shall retain possession and enjoyment of the institutions, foundations and funds intended for their religious, educational and charitable purposes.

Art. 16. The communication of religious societies with their superiors is unrestricted. The publication of ecclesiastical orders shall be subject only to those restrictions to which all other publications are subject.

Art. 17. A special law shall be enacted concerning church patronage and the conditions under which it may be revoked.

Art. 18. The right of appointment, nomination, election and confirmation to ecclesiastical posts is abolished insofar as it is vested in the State and is not based on patronage or special legal titles.

This provision shall not apply to the employment of clergy in the military or in public institutions.

Art. 19. The introduction of civil marriage shall be governed by a special law, which shall also regulate the keeping of civil status registers.

Art. 20. Science and its teaching shall be free.

Art. 21. Sufficient provision shall be made for the education of youth through public schools.

Parents and their representatives may not leave their children or wards without the instruction prescribed for public elementary schools.

Art. 22. Every person shall be at liberty to give instruction and to found and direct educational establishments if he has proved his moral, scientific and technical qualifications to the State authorities concerned.

Art. 23. All public and private educational establishments shall be under the supervision of authorities appointed by the State. authorities. Public teachers shall have the rights and duties of public servants.

Art. 24. In the establishment of public elementary schools, denominational circumstances shall be taken into account as far as possible.

Religious education in elementary school is conducted by the relevant religious communities.

The management of the external affairs of the elementary school is the responsibility of the municipality. The state, with the participation of the

municipalities as provided by law, appoints the teachers of the public elementary schools from the number of qualified persons.

Art. 25. The funds for the establishment, maintenance and extension of the public elementary school shall be provided by the municipalities and, in the event of proven inability, by the State. The obligations of third parties based on special legal titles shall remain in force.

The state therefore guarantees primary school teachers a fixed income appropriate to local conditions.

In the public elementary school, instruction is provided free of charge.

Art. 26. A special law shall regulate the entire education system.

Art. 27. Every Prussian shall have the right to express his opinion freely by word, writing, print and pictorial representation.

Censorship may not be introduced; any other restriction of the freedom of the press only by way of legislation.

Art. 28. Offenses committed by word, writing, print or pictorial representation shall be punished in accordance with the general penal laws.

Art. 29. All Prussians are entitled to assemble peacefully and without arms in enclosed spaces without prior permission from the authorities.

This provision does not apply to open-air assemblies, which are also subject to the disposal of the law with regard to prior authorization by the authorities.

Art. 30. All Prussians shall have the right to associate in societies for such purposes as are not contrary to the penal laws.

The law shall regulate, in particular for the purpose of maintaining public safety, the exercise of the right guaranteed in this and the preceding Art. (29.) above.

Political associations may be subject to restrictions and temporary bans by way of legislation.



Art. 31. The conditions under which corporate rights are granted or denied shall be determined by law.

Art. 32. All Prussians shall have the right of petition. Petitions under a collective name are only permitted to authorities and corporations.

Art. 33. The secrecy of correspondence shall be inviolable; the restrictions necessary in criminal investigations and in cases of war shall be determined by legislation.

Art. 34. All Prussians shall be liable to military service. The extent and nature of this duty shall be determined by law.

Art. 35. The army includes all branches of the standing army and the land army.

In the event of war, the king may, in accordance with the law, summon the land storm.

Art. 36. The armed force may be used for the suppression of internal disturbances and for the execution of the laws only in the cases and forms prescribed by law and at the request of the civil authority. In the latter respect, the law shall determine the exceptions.

Art. 37. The military jurisdiction of the army shall be limited to criminal cases and shall be regulated by law. The provisions on military discipline in the army shall remain the subject of special ordinances.

Art. 38. The armed force may not deliberate in or out of the service, or assemble otherwise than by order. Assemblies and associations of the armed forces for the purpose of discussing military arrangements, orders and decrees are forbidden, even if they have not been convened.

Art. 39. The provisions contained in Art. 5. 6. 29. 30. and 32. shall apply to the army only in so far as they are not contrary to military laws and disciplinary regulations.

Art. 40. The establishment of fiefs and the foundation of family entail communes is prohibited. Existing fiefs and family entail communes shall be converted into freehold property by statutory order. These provisions shall not apply to family foundations.

Art. 41. The foregoing provisions (Art. 40.) shall not at present apply to the fiefs of the throne, the royal house and princely entailed estates, nor to the fiefs situated outside the State, nor to the possessions and entailed estates which were formerly the property of the Empire, in so far as the latter are guaranteed by German federal law. Their legal relationships shall be regulated by special laws.

The further implementation of these provisions is subject to special provisions.

Art. 42. The right of free disposal of real property shall not be subject to any restrictions other than those imposed by general legislation. The divisibility of real property and the redeemability of land charges shall be guaranteed.

Restrictions on the right to acquire and dispose of real estate are permissible for the dead hand.

Canceled without compensation:

1) the sovereignty of the courts, the manorial police and the sovereign power, as well as the sovereign rights and privileges to which certain properties are entitled;

2) the obligations stemming from these powers, from the sovereignty of the estate, the former hereditary subjection, the former tax and trade constitution.

With the abolished rights, the consideration and burdens that were incumbent on the previous beneficiaries also cease to apply.

In the case of the hereditary transfer of a property, only the transfer of full ownership is permitted, but here too a fixed redeemable interest can be reserved.

### Title III - Of the King.

Art. 43. The person of the King is inviolable.

Art. 44. The Ministers of the King are responsible. All acts of the King's Government shall require the countersignature of a Minister in order to be valid, who shall thereby assume responsibility.

Art. 45. The King alone shall have executive power. He appoints and dismisses the ministers. He commands the promulgation of the laws and issues the ordinances necessary for their execution.

Art. 46. The King shall have supreme command of the army.

Art. 47. The King shall fill all posts in the army and in the other branches of the civil service, unless otherwise provided by law.

Art. 48. The King has the right to declare war and make peace, and to make other treaties with foreign governments. The latter require the consent of the Houses for their validity, if they are commercial treaties, or if they impose burdens on the State or obligations on individual citizens.

Art. 49. The King has the right of pardon and mitigation of punishment. In favor of a minister convicted for his official acts, this right may be exercised only at the request of the Chamber from which the accusation originated.

The King can only suppress investigations that have already been initiated on the basis of a special law.

Art. 50. The King shall be entitled to confer orders and other honours not connected with privileges.

He exercises the right to mint coins in accordance with the law.

Art. 51. The King shall convene the Houses and close their sessions. He may dissolve them both at the same time, or one only. But in such case the electors must be assembled within a period of sixty days after the dissolution, and the cantors within a period of ninety days after the dissolution.

Art. 52. The King may prorogue the Houses. Without their consent, such adjournment may not exceed thirty days and may not be repeated during the same session.

Art. 53. The Crown is, according to the Royal House Laws, hereditary in the male line of the Royal House according to the right of primogeniture and the agnatic lineal succession.

Art. 54. The King comes of age on reaching the age of eighteen.

In the presence of the united chambers, he takes the oath to uphold the constitution of the kingdom firmly and unwaveringly and to govern in accordance with it and the laws.

Art. 55. Without the consent of both Houses, the King may not at the same time be ruler of foreign realms.

Art. 56. If the king is a minor or otherwise permanently unable to reign himself, the agnate of full age (Art. 53.) who is closest to the crown shall assume the regency. He shall immediately summon the chambers, which shall decide in joint session on the necessity of the regency.

Art. 57. If his agnate is of age and no legal provision has already been made for this case, the Ministry of State shall appoint the Chambers, which shall elect a regent in joint session. The Ministry of State shall govern until such time as the regent takes office,

Art. 58. The Regent shall exercise the power vested in the King in his name. He shall, after the establishment of the Regency, take an oath before the united Chambers to uphold the Constitution of the Kingdom firmly and inviolably, and to govern in conformity with it and the laws.

Until this oath is taken, the existing entire Ministry of State remains responsible for all government actions.

Art. 59. The Crown Fideicommissary Fund shall retain the pension allocated to the revenues of the domains and forests by the law of January 17, 1820.

#### Title IV - Of the ministers

Art. 60. The ministers, as well as the civil servants delegated to represent them, shall have access to each chamber and must be heard at any time at their request.

Each chamber may request the presence of the ministers.

Ministers only have the right to vote in one or the other chamber if they are members of that chamber.

Art. 61 Ministers may be indicted by a decision of a Chamber for the crimes of misrepresentation of the Constitution, bribery and treason. The Supreme Court of the Monarchy shall decide on such charges in united senates. As long as two supreme courts still exist, they shall meet for the above purpose.

The more detailed provisions on the cases of liability, on the procedure and on the penalties shall be reserved for a special law.

## Title V. - About the chambers.

Art. 62. Legislative power shall be exercised jointly by the King and by two Houses.

The agreement of the king and both chambers is required for every law.

Draft finance laws and state budgets are first submitted to the second chamber; the latter are approved or rejected in their entirety by the first chamber.

Art. 63. Only in cases where the maintenance of public safety or the removal of an unusual emergency urgently requires it, may ordinances not contrary to the Constitution be issued with the force of law under the responsibility of the entire Ministry of State, provided that the Houses are not assembled. However, these shall be submitted to the Chambers for approval immediately at their next meeting.

Art. 64. The King, as well as each House, has the right to propose laws.

Bills that have been rejected by one of the Houses or the King may not be reintroduced in the same session.

The first chamber exists:

a) from the great royal princes;

b) from the heads of the former immediate imperial houses in Prussia and from the heads of those families to whom, by royal decree, the right to a seat and vote in the first chamber, to be inherited according to primogeniture and lineal succession, is attached. This decree also lays down the conditions under which this right is linked to a specific property. The right may not be exercised by proxy and shall be suspended during minority or during an employment relationship with the government of a non-German state, and also as long as the entitled person resides outside Prussia;

c) members appointed for life by the King. Their number may not exceed one tenth of the members mentioned under a. and b. above;

d) of ninety members, who shall be elected in electoral districts, as determined by law, by the thirtyfold number of those primary voters (Art. 70.) who pay the highest direct state taxes, by direct election in accordance with the law; and

e) thirty members from the larger towns in the country, elected by the municipal councils in accordance with the law.

The total number of members named under a. to c. may not exceed the number of members named under d. and e..

A dissolution of the first chamber refers only to the members elected.

Art. 66 The formation of the first chamber in the manner provided in Art. 65. shall take effect on August 7, 1852.

Until that time, the electoral law for the first chamber of December 6, 1848 remains in force.

Art. 67 The legislative term of the first chamber shall be six years.

Art. 68. Every Prussian who has reached the age of forty years, who has not lost full possession of civil rights as a result of a final judicial decision, and who has already belonged to the Prussian State Union for five years, shall be eligible for election as a member of the First Chamber.

The members of the first chamber receive neither travel expenses nor allowances.

Art. 69. The Second Chamber shall consist of three hundred and fifty members. The electoral districts shall be determined by law. They may consist of one or more counties or of one or more of the larger towns.

Art. 70. Every Prussian who has reached the age of five and twenty years and is qualified to vote in municipal elections in the municipality in which he resides is entitled to vote.

Anyone who is entitled to vote in municipal elections in several municipalities may only exercise this right as a primary voter in one municipality.

Art. 71. One elector shall be elected for every full two hundred and fifty souls of the population. The electors shall be divided into three divisions according to the amount of direct state taxes payable by them, in such a manner that each division shall receive one third of the total amount of taxes of all electors.

The total amount is calculated:

a) by municipality, if the municipality forms a primary election district for itself;

b) by district, if the primary election district is made up of several municipalities.

The first division consists of those primary voters who are responsible for the highest tax amounts up to a third of the total tax.

The second subdivision consists of those primary voters on whom the next lower tax amounts fall up to the limit of the second third.

The third division consists of the lowest-taxed primary voters, to whom the third third falls.

Each division elects a third of the electors to be elected.

The divisions may be subdivided into several electoral associations, none of which may include more than five hundred original voters.

The electors shall be elected in each ward from the number of eligible voters in the ward without regard to the wards.

Art. 72. The deputies shall be elected by the electors. The details of the conduct of the elections shall be determined by the electoral law, which shall also make provision for those cities in which the meal and slaughter tax is levied instead of a portion of the direct taxes.

Art. 73. The legislative term of the second chamber shall be three years.

Art. 74. Any Prussian who has attained the age of thirty years, who has not lost full possession of civil rights as a result of a final judicial decision, and who has been a member of the Prussian State for three years shall be eligible for election as a member of the Second Chamber.

Art. 75. The chambers shall be re-elected at the end of their legislative period. The same shall apply in the event of dissolution. In both cases, the existing members are eligible for re-election.

Art. 76. The Houses shall be regularly convened by the King in the month of November of each year, and also as often as circumstances require.

Art. 77. The opening and closing of the Houses shall be done by the King in person or by a minister appointed by him for that purpose at a meeting of the united Houses.

Both chambers are convened, opened, adjourned and closed at the same time. If one chamber is dissolved, the other is adjourned at the same time.

Art. 78. Each chamber shall examine and decide on the legitimacy of its members. It shall regulate its proceedings and discipline by rules of procedure and shall elect its president, vice-presidents and secretary. Officials do not require leave to join the Chamber.

If a member of the Chamber accepts a salaried state office or enters an office in the state service which is associated with a higher rank or a higher salary, he shall lose his seat and vote in the Chamber and can only regain his position in the same by new election.

No one can be a member of both chambers.

Art. 79. The sittings of both Houses shall be public. Each House shall meet in secret at the request of its President or of ten members, at which a decision shall first be taken on this request.



Art. 80. Neither House may pass a resolution unless a majority of the legal number of its members is present. Each House shall pass its resolutions by an absolute majority of votes, subject to any exceptions to be determined by the rules of procedure for elections.

Art. 81. Each House shall have the right to address the King.

No person may submit a petition or address to the Chambers or any of them in person.

Each chamber may refer the documents addressed to it to the ministers and request information from them about complaints received.

Art. 82. Each House shall have the power to appoint commissions to investigate facts for the purpose of providing information.

Art. 83. The members of both Houses are representatives of the whole people. They vote according to their free convictions and are not bound by orders or instructions.

Art. 84. They may never be called to account for their votes in the House, but only within the House for the opinions expressed therein, on the basis of the Rules of Procedure (Art. 78.).

No member of a House may, without the authorization of the House, be summoned to an inquiry or arrested during the session for an offence punishable by law, unless he is apprehended while committing the offence or during the next day after committing it.

The same authorization is necessary in the case of an arrest for debt.

Any criminal proceedings against a member of the Chamber and any remand or civil detention shall be suspended for the duration of the session if the Chamber in question so requests.

Art. 85. The members of the Second Chamber shall receive travel expenses and allowances from the State coffers in accordance with the law. This may not be waived.

## Title VI - On the judicial power.

Art. 86. The judicial power shall be exercised in the name of the King by independent courts, subject to no other authority than that of the law.

The judgments shall be issued and executed in the name of the King.

Art. 87. Judges shall be appointed for life by or on behalf of the King.

They may only be dismissed or temporarily removed from office by a judge's decision for reasons provided for by law. Provisional suspension from office, which does not occur by operation of law, and involuntary transfer to another post or retirement may be effected only for the causes and in the forms specified by law and only on the basis of a judicial decision.

These provisions shall not apply to transfers necessitated by changes in the organization of the courts or their districts.

Art. 88. Judges may not henceforth be entrusted with other salaried offices of state. Exceptions are only permitted on the basis of a law.

Art. 89. The organization of the courts shall be determined by law.

Art. 90. Only those persons may be appointed to a judicial office who have qualified for it in accordance with the law.

Art. 91. Courts for special classes of matters, especially commercial and industrial courts, shall be established by legislation in those places where the need requires them.

The organization and jurisdiction of such courts, the procedure before them, the appointment of their members, the special circumstances of the latter and the duration of their office shall be determined by law.

Art. 92. There shall be only one supreme court in Prussia.

Art. 93 Hearings before the court of cognizance in civil and criminal cases shall be public. However, the public may be excluded by an order of the court to be publicly announced if it threatens public order or morality.

In other cases, the public can only be restricted by law.

Art. 94. In the case of crimes punishable by severe penalties, of all political crimes, and of all criminal offenses not expressly excluded by law, the guilt of the accused shall be decided by a jury.

The formation of the jury court is regulated by law.

Art. 95. A special jury court may be established by a law to be enacted with the prior consent of the Houses, which shall have jurisdiction over the crimes of high treason and those serious crimes against the internal and external security of the State which are assigned to it by law. The formation of the jury in this court shall be regulated by law.

Art. 96. The jurisdiction of the courts and administrative authorities shall be determined by law. A court designated by law shall decide on conflicts of jurisdiction between the administrative and judicial authorities.

Art. 97. The conditions under which public civil and military officials may be sued for transfers of rights committed in excess of their official powers shall be determined by law. However, the prior authorization of the superior official authority may not be required.

## Title VII - On civil servants who are not members of the judiciary.

Art. 98. The special legal relations of civil servants who are not members of the judiciary, including public prosecutors, shall be regulated by a law which, without inappropriately restricting the Government in its choice of executive organs, grants civil servants adequate protection against arbitrary deprivation of office and income.

## Title VIII - About finances.

Art. 99. All revenues and expenditures of the State must be estimated in advance for each year and entered in the State budget.

The latter is determined annually by law.

Art. 100. taxes and duties for the state treasury may only be levied to the extent that they are included in the state budget or ordered by special laws.

Art. 101. Preferential treatment may not be introduced with regard to taxes.

The existing tax legislation will be revised and any preferential treatment abolished.

Art. 102. State or municipal officials may only levy fees on the basis of the law.

Art. 103. Borrowing for the State Treasury shall only take place on the basis of a law. The same applies to the assumption of guarantees at the expense of the State.

Art. 104. Subsequent approval by the Houses is required for budget overruns.

The accounts of the state budget shall be examined and approved by the Supreme Chamber of Accounts. The general accounts of the state budget for each year, including an overview of the state debt, shall be submitted to the chambers with the comments of the Supreme Chamber of Accounts for the discharge of the state government.

A special law will determine the establishment and powers of the Ober-Rechnungskammer.

## Title IX - From the municipalities, district, county and provincial associations.

Art. 105. The representation and administration of the municipalities, districts, boroughs and provinces of the Prussian State shall be determined in detail by special laws, laying down the following principles:

1) The internal and special affairs of the provinces, districts, counties and municipalities shall be decided by assemblies consisting of elected representatives, whose resolutions shall be implemented by the heads of the provinces, districts, counties and municipalities.

The law shall determine the cases in which the resolutions of these representative bodies are subject to the approval of a higher representative body or the state government.

2) The heads of the provinces, districts and counties shall be appointed by the King.

The municipal regulations shall determine the details of the involvement of the state in the appointment of municipal leaders and the exercise of the right of election to which the municipalities are entitled.

3) The municipalities, in particular, shall be entitled to the independent administration of their municipal affairs under the statutory supervision of the state. The law shall determine the involvement of the municipalities in the administration of the local police.

In order to maintain order, a municipal militia may be established by municipal resolution in accordance with the law.

4) The deliberations of the provincial, district and municipal councils shall be public. Exceptions shall be determined by law. A report on income and expenditure must be published at least once a year.

#### General provisions.

Art. 106 Laws and ordinances shall be binding if they have been promulgated in the form prescribed by law.

The examination of the legal validity of duly promulgated royal decrees is not the responsibility of the authorities, but only of the chambers.

Art. 107. The Constitution may be amended by ordinary legislative procedure, by the ordinary absolute majority of votes in each House, in two votes, between which there must be a period of at least one and twenty days.

Art. 108. The members of both Houses and all officers of state shall take an oath of allegiance and obedience to the King and swear to observe the Constitution conscientiously.

The army is not sworn in to the constitution.

Art. 109. The existing taxes and duties shall continue to be levied, and all provisions of the existing codes, individual laws and ordinances which are not contrary to the present constitution shall remain in force until they are amended by law.

Art. 110: All authorities established by existing laws shall remain in operation until the organic laws relating to them have been executed.

Art. 111. In the event of war or insurrection, Art. 5. 6. 7. 27. 28. 29. 30. and 36. of the Constitutional Charter may be suspended temporarily and district by district in the event of urgent danger to public safety. The details shall be determined by law.

Transitional provisions.

Art. 112. Pending the enactment of the law provided for in Art. 26, the provisions of law now in force shall continue to apply to education.

Art. 113. Prior to the revision of criminal law, a special law shall be enacted on offenses committed by word, writing, print or pictorial representation.

Art. 114. Pending the adoption of the new municipal code, the existing provisions regarding police administration shall remain in force.

Art. 115. Pending the enactment of the electoral law provided for in Art. 72, the ordinance of May 30, 1849, concerning the election of deputies to the second chamber shall remain in force.

Art. 116. The two supreme courts still in existence shall be united into one. The organization shall be established by a special law.

Art. 117. Special consideration shall be given in the Civil Servants Act to the entitlements of civil servants employed on budget before the promulgation of the constitutional instrument.

Art. 118. Should the constitution to be adopted for the German Federal State on the basis of the draft of May 26, 1849, make amendments to the present constitution necessary, the King shall order them and communicate these orders to the Chambers at their next meeting.

The chambers will then decide whether the provisionally ordered amendments are in accordance with the constitution of the German federal state.

Art. 119. The oath of the King mentioned in Art. 54., as well as the prescribed swearing-in of the two Houses and of all State officials, shall take place immediately after the present revision of this Constitution, which has been completed by means of legislation (Art. 62. and 108.).

Authenticated under Our Supreme Signature and the Royal Seal.

Given Charlottenburg, January 31, 1850.

(L. S.) Friedrich Wilhelm.

Count of Brandenburg. v. Ladenberg. v. Manteuffel. v.  
Strotha.

v. d. Heydt. v. Rabe. Simons. v. Schleinitz.

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## **18. Law for the protection of personal freedom. From February 12, 1850. \*)**

The decree of September 24, 1848., the so-called Habeas Corpus Act of the National Assembly, was frequently contested by the police authorities because in most cases it made it impossible for police officers to supervise and prosecute suspicious persons. In order to remedy these complaints in particular, the habeas corpus act was completely revised in the following law.

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\*) This law replaced the much-discussed habeas corpus act of the National Assembly of September 24, 1848.

We Frederick William, by the grace of God, King of Prussia etc. etc. decree, with the consent of both chambers, repealing the law of September 24, 1848., as follows:

§. 1. The arrest of a person may only be effected by virtue of a written judicial order specifying the accusation and the accused.

This order must be served on the accused at the time of arrest or during the following day at the latest.

§. 2. The provisional apprehension and arrest of a person may take place without a court order:

1) if the person is affected or prosecuted during or immediately after the commission of a criminal offense;

2) if, even later, circumstances arise which make the person urgently suspicious as the author or participant of a criminal offense and at the same time of flight.

§. 3. The police authorities and other officials who have the duty under existing laws to investigate crimes and misdemeanors, as well as the guards, are entitled to make provisional apprehensions and arrests (§. 2.), but the latter only in the case of §. 2. No. 1.

If, in the case of §. 2. No. 1, the perpetrator flees or is strongly suspected of fleeing, or if there is reason to fear that the identity of the perpetrator cannot otherwise be established, any private person is authorized to apprehend the perpetrator.

The person seized must be brought immediately to one of the above-mentioned officials for the purpose of provisional arrest or to a guard team.

§. 4. Upon every arrest, the necessary steps must be taken immediately to bring the accused before the judge who has issued the order. -- Every person provisionally arrested must either be released in the course of the following day at the latest or the necessary steps must be taken within that time to bring him before the public prosecutor at the competent court. The public prosecutor must either order the immediate release or immediately apply to the court for a decision on the arrest. -- If a person has been provisionally arrested outside the district of the competent court, he may demand to be brought first before the public prosecutor of the district in which he was arrested. The latter is only authorized to release the arrested person if he proves that the arrest was based on a misunderstanding. Otherwise he must arrange for the person to be brought before the public prosecutor of the competent court.

§. 5. Every person arrested or provisionally detained must be heard by the competent judge at the latest during the following day after being brought before him in such a way that he is informed of the subject of the accusation and is given the opportunity to clarify any misunderstanding.

§. 6. The authorities, officials and guards referred to in §. 3. are authorized to take persons into police custody if the protection of these



persons or the maintenance of public morality, security and peace urgently require this measure. However, persons taken into police custody must be released no later than the following day or the necessary steps must be taken within that time to transfer them to the competent authority.

§. 7. No one may enter a dwelling against the will of the owner, except on the basis of an authorization arising from official capacity or an order issued by a legally authorized authority.

§. 8. It is forbidden to enter the apartment during the night The night time includes the hours from 6 o'clock in the evening to 6 o'clock in the morning for the period from October 1st to March 31st and the hours from 9 o'clock in the evening to 4 o'clock in the morning for the period from April 1st to September 30th.

§. 9. The prohibition to enter a dwelling at night does not apply to cases of fire or water emergency, danger to life or a request arising from inside the dwelling; it does not apply to places where the public is admitted without distinction during the night, as long as these places are open to the public for distant entry or to the public that has entered for distant stay.

§. 10. For the purpose of the provisional apprehension and arrest of a person who has been pursued in the commission of a criminal offense or immediately thereafter, as well as for the purpose of recapturing a prisoner who has escaped, the pursuing or assigned officer, as well as the pursuing or assigned guard team, may also enter a dwelling at night. In addition, for the purpose of arrest or provisional arrest, the pursuing officer may only enter a dwelling at night if there are urgent reasons to believe that the person being pursued will evade arrest altogether if there is a longer delay. Access to dwellings used by military personnel may not be denied to military superiors or authorized representatives, even at night, for the purpose of carrying out official orders. The prohibition to enter a dwelling at night does not apply to those rooms which customs and tax officials are authorized to enter for the purpose of carrying out the audits incumbent upon them, without being restricted to daytime by the provisions of the customs and tax laws.

§. 11. House searches may only be carried out in the cases and according to the forms laid down by law with the involvement of the judge or the judicial police and, where this has not been introduced, the police commissariats or the municipal or local police authorities. They must, as far as this is possible, be carried out with the participation of the accused or the members of the household.

§. 12. The prohibition on conducting house searches at night (Section 8) shall not apply:

- 1) to the homes of persons who have been placed under police supervision by a penal order;
- 2) to places which are known to the police as hideaways for gambling, as hostels and meeting places for criminals, as depositories of criminally acquired goods or as the abode of dissolute women;
- 3) if there are urgent grounds for believing that, in the event of prolonged delay, the objects in a dwelling in respect of which a criminal offense has been committed or the evidence therein may be lost or endangered.

§. 13. In those parts of the country in which the status under police supervision has not yet been established by a penal decree, house searches are permitted at night in the dwellings of those persons who, prior to the coming into force of the law of February 12, d. J., concerning the status under police supervision, have been convicted of theft, robbery, receiving stolen goods or of contraband or customs fraud. February 3 for theft, robbery, receiving stolen goods or for contraband or customs fraud in the cases of §§. 3, 4, 11 No. 2, §§. 13, 14, 15, 24 of the Customs Criminal Law of January 23, 1838, to a six-week or longer term of imprisonment by a collegiate court.

The authorization to search the homes of these persons at night shall last for at least one year from the day on which the custodial sentence was served, but in cases in which a custodial sentence of more than one year was imposed, for a period equivalent to the custodial sentence imposed.

Persons convicted of contraband or customs fraud in the above-mentioned cases may also be prohibited by the police authorities from leaving their homes during the hours of the night to be determined by the police authorities (§. 8.), on pain of a police fine of two to five thalers or imprisonment for up to eight days.

The above provisions shall also apply to the district of the Court of Appeal at Cologne insofar as they concern persons convicted of contraband or customs fraud.

Authenticated under Our Supreme Signature and the Royal Seal.

Given Charlottenburg, February 12, 1850.

(L. S.) Friedrich Wilhelm.

Count. v. Brandenburg. v. Ladenberg. v. Manteuffel. v.  
Strotha.

v. d. Heydt. v. Rabe. Simons. v. Schleinitz.

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### **19. Act concerning the position under police supervision. From February 12, 1850.**

According to the General Land Law, the police authorities are to keep persons who are dangerous to the public good due to their pernicious tendencies under special supervision. Until now, however, there have been no specific standards for this supervision; on the contrary, the police authorities have acted in a completely arbitrary manner, and they have been given the administrative right to impose even 6 months' imprisonment on the offenders in order to enforce discipline. There was no provision regarding the duration of police supervision and the actual consequences thereof. This law definitively regulates all these conditions. It has given rise to many divergent opinions among the judicial authorities as to whether it should also be applied retroactively to crimes that are now being adjudicated and which were committed before the enactment of this law.

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree, with the consent of the Chambers, the following:

§. 1. Sentencing to a term of imprisonment of six weeks or longer shall necessarily entail placement under police supervision if it is for a crime of the types described below:

a) Treason in the cases of §§. 91-118, 133, 134 Tit. 20 Thl. II. General Land Law, insofar as these crimes are punishable by imprisonment or, according to general principles, a prison sentence is imposed instead of the death penalty, with the exclusion, however, of simple complicity;

b) Attempted murder in the cases of §§. 837., 838. tit. 20. Thl. II. General Land Law;

c) Participation in riots as a leader, instigator or ringleader;

d) Public incitement to riot;

e) Theft;

f) Robbery;

g) Receiving stolen goods,

h) Coin counterfeiting;

i) Fraudulent bankruptcy;

k) Perjury;

l) Procuring in the cases of SS. 996., 997. tit. 20. Thl. II. General Land Law;

m) wilful arson, wilful causing of flooding, wilful damage to railroads or telegraph facilities;

n) Contraband or customs fraud in the cases of §§. 4., 11. No. 2., §§. 13., 14., 15., 24. of the Customs Penal Act of January 23, 1838, it may be the six-week or longer imprisonment as such, or in the case of inability to pay a fine.

§. 2. For the following crimes:

a) Embezzlement;

b) Extortion;

c) Forgery of documents;

d) Fraud;

e) wilful damage with common danger in cases other than those specified in §. 1, as well as threats of damage associated with common danger;

f) Contraband or customs defraudment in the case of §. 3. of the Customs Penalty Act of January 23, 1838, the six-week or longer prison sentence may be recognized as such, or in the event of inability to pay a fine;

the judge is authorized, depending on the circumstances, to order that the criminal be placed under police supervision if he is sentenced to a term of imprisonment of six weeks or longer.

§. 3. Cases in which the conviction is based on an attempt to commit such crimes or on participation in them (Sections 1 and 2) are not excluded.

Sentencing by a single judge should never result in a position under police supervision.

§. 4. The duration of police supervision is one year if the duration of the recognized prison sentence does not exceed one year.

In other cases, it is equal to the duration of the prison sentence imposed for the crime in question.

§. 5. The courts are authorized to extend the duration of police supervision under the law to a maximum of five years if the custodial sentence imposed does not reach three years, and to a maximum of ten years if the custodial sentence imposed is three years or more but does not reach ten years.

§. 6. The position under police supervision and its duration shall be determined by the judge at the same time as the other penalties.

§. 7. The effects of the position under police supervision shall begin with the legal force of the judgment as a result of which it occurs. However, the period of police supervision shall be calculated from the day on which the sentence of imprisonment is served. §. 8. Position under police supervision has the following effects:

1) The convicted person may be prohibited from staying in certain places by the state police authorities.

2) House searches of the convicted person are not subject to any restriction as to the time at which they may take place.

§. 9. If the conviction is for theft, robbery, receiving stolen goods, contraband or customs fraud, the local police authority may also (§. 8.) prohibit the convicted person from leaving his place of residence and even his home during the hours of the night to be determined by it (§. 8. of the law for the protection of personal liberty of February 12, 3rd) without its permission. In the event of a conviction for contraband or customs fraud, the border customs authorities are authorized to prohibit the person under police supervision from entering foreign countries without their special permission.

§. 10. If the person who is placed under police supervision is a foreigner, he may be expelled from the country by the police.

The power of the competent authorities to order the expulsion of foreign nationals in other cases is not affected by this provision.

§. 11. Anyone who is placed under police supervision and acts contrary to the restrictions of liberty imposed on him as a result thereof shall be punished with imprisonment for up to three months.

In the event of a repeat offense, a prison sentence of fourteen days to one year shall be imposed.

§. 12. In the district of the Court of Appeal at Cologne, the provisions of the Rhenish Criminal Code on the position under police supervision shall apply everywhere.

However, the provisions of this law on the position under police supervision following a conviction for contraband and customs fraud shall also apply to the district of the Court of Appeal in Cologne.

Authenticated under Our Supreme Signature and the Royal Seal.

Given Charlottenburg, February 12, 1850.

(L. S.) Friedrich Wilhelm.

Gr. v. Brandenburg. v. Ladenberg. v. Manteuffel. v. Strotha.

v. d. Heydt. v. Rabe. Simons. v. Schleinitz.

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## **20. Act concerning the introduction of the General Exchange Regulations for Germany. Of February 15, 1850 \*)**

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree, with the consent of both Houses, at the request of Our State Ministry, the following:

§. 1. The provision of §. 1. of the decree of January 6, 1848 (Law Collection, page 49), according to which the general German bill of exchange regulations published in the Imperial Law Gazette of November 27, 1848., came into force in Prussia on February 1, 1848., and on the other hand §§. 713. to 1249, Title 8, Part II, of the General Land Law and Articles 110 to 189 of the Rhenish Commercial Code were repealed on that date, shall remain in force.

§. 2. Amortization of a bill of exchange must be applied for before the ordinary court of the place of payment and, where commercial courts exist, before them. The applicant must provide a copy of the bill of exchange or at least state the essential contents thereof and everything that the court deems necessary for complete recognizability, and must also substantiate possession and loss. The court issues a public summons to the unknown holder of the bill of exchange to produce the bill of exchange to the court within a certain period of time, with the warning that otherwise the bill of exchange will be declared invalid. -- The summons shall be posted at the court house or at another public place deemed suitable, and if there is a stock exchange at the place of payment, at the stock exchange premises, and shall be inserted once in the official gazette and three times in a domestic or foreign newspaper. -- The court is authorized to have the summons posted in several places and inserted in several newspapers if this appears appropriate under the circumstances. -- The time limit for notification is set at a minimum of six months and a maximum of one year from the date of expiry. If the bill of exchange is presented by a holder, the applicant shall be notified thereof and given the opportunity to assert his right against the holder. If no holder comes forward, the court shall, on further application by the applicant, declare the bill of exchange to be amortized.

§. 3. In the district of the Court of Appeal in Cologne, the judicial officers who may take up protests also include the bailiffs.

§. 4. Protests may only be lodged from 9 a.m. to 6 p.m., and at an earlier or later time of day only with the consent of the protester.

§. 5. The execution of the bill of exchange arrest is inadmissible against persons of military rank as long as they belong to the service. However, the provisions applicable to civil servants shall henceforth apply to military officers.

§. 6. Actions on bills of exchange may be brought both in the court of the place of payment and in the court in which the defendant has his personal jurisdiction. If several bill debtors are sued together, any court other than the court of the place of payment to which one of the defendants is personally subject shall have jurisdiction. In the court in which an action on a bill of exchange is brought, all parties liable on a bill of exchange who are summoned by one of the parties in accordance with the procedural laws existing in the various parts of the country to take recourse or who are sued after due notice of the dispute has been given must also appear.

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\*) See no. 4 above for the bill of exchange order itself.

§. 7. In those parts of the country in which the general rules of court apply, even objections which are admissible in themselves, in so far as evidence thereof is required, shall only be taken into consideration in matters of bills of exchange if they are presented by document, affidavit or testimony of such witnesses as are immediately brought to the court. External interrogations of witnesses, if they are brought in at the same time as the hearing, are only valid to the extent that they are taken with the involvement of the opposing party or an authorized representative appointed by him for this purpose, and this provision replaces the provisions referred to in §. 26, Title 27, Part I of the General Court Rules.

§. 8. In the district of the Court of Appeal at Cologne, actions arising from promissory notes shall also belong before the Commercial Courts if they are neither signed by traders nor have commercial transactions as their cause. (Art. 636., 637. of the Rhenish Commercial Code.)

§. 9. The provisions of the General Land Law on commercial bills of sale and commercial assignments in §§. 1250 to 1304 Tit 8. Theil II. and §. 297. Tit 16. Theil I. are hereby repealed. This provision shall not apply to legal relationships arising from such commercial bills of exchange and



commercial assignments issued before the date on which this Act comes into force. The validity of the ordinance of January 6, 1849, shall expire on the day on which this Act enters into force (Law Collection, page 49).

Authenticated under Our Supreme Signature and the Royal Seal.

Given Bellevue, February 15, 1850.

(L. S.) Friedrich Wilhelm.

Gr. v. Brandenburg. v. Ladenberg. v. Manteuffel. v. Strotha.

v. d. Heydt. v. Rabe. Simons. v. Schleinitz.

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## **21. Act concerning the abolition of property tax exemptions. From February 24, 1850.**

We Frederick William, by the Grace of God King of Prussia etc. etc. decree, with the consent of the Chambers, the following:

§. 1. Land tax shall henceforth be paid on all land in the state that yields a net income.

The property tax exemptions or privileges still enjoyed by individual estates and plots of flat land and certain classes thereof under the various tax systems currently in force or under special privileges are hereby abolished.

In the same way, those towns and their districts which are now only subject to the service tax in accordance with the provision of §. 6. of the general tax law of May 30, 1820, or which pay neither service tax nor land tax, shall be subject to the latter, but those towns which, according to the tax system applicable to them, are subject to a lower land tax than the localities of the flat country subject to the same tax system, shall be placed on an equal footing with the latter.

The decision as to whether and to what extent compensation is to be granted to the owners of the previously exempted or preferred properties remains reserved.

§. 2. Excluded from the provision of §. 1. are those properties which belong to the state, the provinces, the districts or the municipalities, insofar as they are intended for a public service or use, in particular therefore:

a) alleys, squares, bridges, country and military roads, railroad tracks, roads and footpaths, towpaths, streams, rivers, brooks, fountains, navigable canals, ports, harbors, wastelands, forts, fortifications, ore yards, churchyards, burial grounds, walks, air and botanical gardens;

b) tree nurseries intended solely for the planting of public squares, streets and facilities and plantations serving to stabilize the banks of the sea, public streams or rivers;

c) Royal palaces and buildings intended for use by public authorities or as official residences for civil servants, such as: Military, government, judicial, police, tax and postal administration buildings, district and municipal buildings;

d) churches, chapels and other buildings dedicated to public worship;

e) the official residences of archbishops, bishops, cathedral and curate or parish clergy and other persons holding clerical functions in the various religious communities; furthermore, grammar school, seminary and school teachers, sextons and other ministers of public worship;

f) libraries, museums, university buildings and all other buildings intended for teaching;

g) poorhouses and hospitals, reformatories, detention centers and prisons.

The property tax exemption of the buildings listed under e. to g. also extends to the associated courtyards and gardens located in the same satisfaction.

Similarly, all bridges, artificial roads, railroad tracks and navigable canals which have been constructed for public use by private individuals or joint-stock companies with the approval of the state shall remain exempt from property tax.

§. 3. In the two western provinces, the properties previously exempt from property tax shall be assessed in accordance with the provisions of the Property Tax Act of January 21, 1839 (Law-Collection for 1839. Page 30. ff.).

§. 4. Within the six eastern provinces, the properties previously exempt from the payment of land tax or preferred in this respect shall be provisionally assessed for land tax, with the involvement of the parties concerned, in accordance with instructions to be issued by the Minister of Finance.

§. 5. After the business of the provisional assessment has been completed, the results thereof, together with the draft of a law ordering the levying of the property tax in accordance with this assessment, shall be submitted to the Chambers for approval.

Authenticated under Our Supreme Signature and the Royal Seal.

Given Charlottenburg, February 24, 1850.

(L.S.) Friedrich Wilhelm.

Gr. v. Brandenburg. v. Ladenberg. v. Manteuffel. v. Strotha.

v. d. Hehdt. v. Rabe. Simons. v. Schleinitz.

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## **22. Act amending certain provisions of the Act of January 3, 1845, concerning the certification of land and the establishment of new settlements. Of February 24, 1850.**

We Friedrich Wilhelm, by the grace of God, King of Prussia etc. etc. decree, with the consent of both chambers, the following for those parts of the country in which the law of January 3, 1845, concerning the division of land and the establishment of new settlements, has the force of law:

§. 1. Sections 2 to 5, including the law of January 3, 1845, concerning the certification of land and the establishment of new settlements (Law -

Collection 1845. p. 25.), as well as the declaration of August 7, 1846, concerning the application of section 2 of this law (Law - Collection 1846. p. 395.), are hereby repealed.

Contracts of sale of any kind, by which real property is to be divided, individual parts of a real property are to be subdivided, or real property which is an accessory to another real property is to be separated from the latter, must be sent by the court before which they were concluded or recognized according to their content or signature, immediately after their recording, to the court which has to keep the mortgage register of the real property concerned, provided that this court is different from the former. The same obligation is imposed on notaries by extension of the provision of §. 31. of the ordinance of January 2, 1849 (Law - Collection of 1849. p. 10.).

§. 2. The writing off of the partition pieces in the mortgage book, their transfer to another folio, the handing over of the building consensus for new settlements, provided that the provisions of §§. 27. and 28. of the law of January 3, 1845 are complied with, as well as the correction of the title for the purchaser of the partition piece are not dependent on the regulation mentioned in §. 7. No. 1 and in §§. 25. and 26. of the law of January 3, 1845.

§. 3. All contracts referred to in §. 1. of the present law shall, immediately after they have come to the knowledge of the court which has to keep the mortgage book of the partitioned property, be sent as a certified copy to the district administrator or magistrate who, according to §. 8. of the law of January 3, 1845, is responsible for the regulation prescribed in §. 7. No. 1 and in §§. 25. and 26 of the same law. Upon receipt of this copy, the District Administrator or magistrate must immediately submit to the regulation *ex officio*.

§. 4. The power conferred on governments by section 20 of the Act of January 3, 1845, to determine an immediately enforceable interim order in cases in which disputes arise during regulation, shall be extended to all cases in which the government deems it appropriate to postpone definitive regulation.

Authenticated under Our Supreme Signature and the Royal Seal.

Given Charlottenburg, February 24, 1850.

(L. S.) Friedrich Wilhelm.

Count of Brandenburg. v. Ladenberg. v. Manteuffel. v. Strotha.

v. d. Heydt. v. Rabe. Simons. v. Schleinitz.

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### **23. Act concerning the support of needy families called up to serve in the reserve and rural army. Bom February 27, 1850.**

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree, with the consent of the Chambers, the following:

§. 1. Reserve and Landwehr personnel shall, as soon as they are called up for war or due to extraordinary conscription of the reserve or Landwehr, receive support for their families, in case of need, in accordance with the more detailed provisions of this law.

§. 2. With regard to the entitlement to support (§. 1.), the following are considered to belong to the family: the wife of the person called up for service and their children under the age of 14.

The following may also be included: children over the age of 14, as well as relatives in the ascending line and siblings, provided they have to be supported by the person called up for service.

On the other hand, distant relatives, divorced wives and illegitimate children are excluded from the right to receive support.

§. 3. The obligation to support these families (§§. 1., 2.) is imposed on the districts.

Excluded from this is the support to be granted to the families of military officers in the cases of §. 1; this shall be paid from the Military Fund in the same way as for the families of officers of the standing army.

§. 4. The family's need for support must be proven in each individual case.

§. 5. As a minimum, the following must be granted as district support

a) for the wife 1 Rthlr. 10 Sgr. per month and in the period from November 1 to April 1 2 Rthlr,

b) 15 gr. per month for each child under 14 years of age.

The monetary support can be partially replaced by the supply of bread grain, fuel or potatoes.

§. 6. A support commission shall be formed in each district, which shall

a) both about the need for support of the families concerned, and

b) to take a final decision on the extent and nature of the support to be granted to them, after the local board has been heard, taking careful account of their ability to work and in compliance with the provisions of §. 5, and

c) must monitor the punctual granting of the approved support.

§. 7. The support commission shall consist of the district administrator as chairman and a number of members appropriate to the local circumstances, who shall be elected by the district council from the district constituents. The district council is authorized to delegate the business of the commission to the district committee.

An officer to be elected by the respective Landwehr battalion command shall be assigned to each support commission.

§. 8. The Commission (p. 7.) can only pass resolutions if more than half of its members are present. Resolutions shall be passed by majority vote; in the event of a tie, the Chairman shall have the casting vote.

The officer assigned to the commission takes part in the negotiations, but has no casting vote.

§. 9. The funds required for the support shall be procured by the district council and, if necessary, raised in proportion to the other district municipal contributions.

§. 10. The district support determined by the Commission (p. 7.) is paid to the families in semi-monthly instalments in advance.

The grant begins with the departure of the person called up for service from home and usually ends with his return.

Support from private associations and individual private persons may not be offset against the district support granted.

§. 11. To the families of those who are on active service,

a) are guilty of desertion, or

b) be sentenced to imprisonment or a more severe punishment by a court decision,

the approved district support will no longer be granted as soon as the support commission, which is to be informed immediately of such cases by the troop commanders, receives notification.

§. 12. The families of those who are killed in action or die as a result of an injury in the service or an illness caused by the service before they are discharged home shall continue to receive the district allowance granted for three years from the date of death of the father of the family, provided that their need for assistance does not cease before the end of this period.

§. 13. The families of those who, through no fault of their own, are taken prisoner by the enemy shall continue to receive the district support granted for the duration of their captivity.

§. 14. The support provided by this law to the families of the reserve and military teams does not extend to the time during which these teams take part in the annual military exercises.

§. 15. Towns which do not belong to a rural district have the same obligation as the districts (§§. 3. and 6.). The district council (§§. 7. and 10.) shall be replaced by the municipal council and the mayor shall replace the district administrator (§. 7.).

§. 16. The Ministers of the Interior and of War shall be responsible for the implementation of this Act.

Authenticated under Our Supreme Signature and the Royal Seal.

Given Charlottenburg, February 27, 1850.

(L. S.) Friedrich Wilhelm.

Gr. v. Brandenburg. v. Ladenberg. v. Manteuffel. v. Strotha.  
v. d. Heydt. v. Rabe. Simons. v. Schleinitz.

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**24. Act concerning the redemption of real estates and the regulation of landlord and peasant relations. From March 2, 1850. \*)**

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree, with the consent of both Houses, the following for the whole extent of the monarchy, with the exception of the parts of the country situated on the left bank of the Rhine:

§. 1. The following laws shall expire on the date of promulgation of the present Act:

1) the ordinance on the redemption of all types of domanial levies of March 16, 1811 (Law Collections 1811. p. 157.);

2) the edict of September 14, 1811, concerning the regulation of manorial and peasant relations (Law Collections 1811. p. 281.);

3) the Declaration of the Edict of September 14, 1811. concerning the regulation of the manorial and peasant relations of May 29, 1816. (Law Collections 1816. p. 154.);

4) the decree of May 31, 1816. concerning the redemption of the ground rent of land belonging to ecclesiastical and charitable foundations (Law Collections - 1816. p. 181.);

5) the decree of June 9, 1819. for the explanation of some doubtful provisions of the edicts of September 14, 1811. and May 29, 1816. concerning the regulation of landlord and peasant relations (Law Collections 1819. p. 151.);



6) the decree of November 18, 1819. concerning the application of the edict of September 14, 1811. concerning the regulation of landlord and peasant relations to the Kottbusser district (Law Collections 1819. p. 249.);

7) the order of June 7, 1821. concerning the redemption of services, payments in kind and in money from land which is owned by right of inheritance or leasehold (Law Collections 1821. p. 77.);

8) the law of July 21, 1821. concerning the application of the edict of September 14, 1811. concerning the regulation of the manorial and peasant relations, and the later laws enacted thereon to the Upper and Lower Lusatia and the Office of Senftenberg (Law Collections 1821. p. 110.);

9) the declaration of March 24, 1823, concerning the remuneration for the services of regulated innkeepers (Law Collections 1823. p. 35.);

10) the law of April 8, 1823. concerning the regulation of landlord and peasant relations in the Grand Duchy of Posen, the districts reunited with West Prussia, the Kulm and Michelau districts and in the rural area of the city of Thorn (Law Collections 1823. p. 49.);

11) the law of April 8, 1823, on the application of the edict of September 14, 1811, concerning the regulation of landlord and peasant relations, and the laws subsequently enacted thereon, and also on the application of the order of June 7, 1821, concerning the discharge of services etc. to the territory of the city of Danzig (Law Collections 1823. p. 73.);

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\*) This also includes the law of March 2, 1850, concerning the establishment of pension banks, which, as it is too specific in content, is not included here.

12) the cabinet decree of February 13, 1825, by which the Mennonites are excluded from the effects of the regulation edict of September 14, 1811;

13) the decree of July 13, 1827. for the more detailed provision of Art. 5. letter a. of the declaration of May 29, 1816. for the regulation of the manorial and peasant conditions in the application to the gardeners and other owners of small, rustic places in Upper Silesia etc. 1. (Law Collections 1827. p. 79.);

14) the order of July 13, 1829. concerning the redemption of land charges in those parts of the country which formerly belonged to the Kingdom of Westphalia, to the Grand Duchy of Berg or to the French departments (Law Collections 1829 p. 65.);

15) the cabinet decree of December 11, 1831. on the remuneration of the reserved services in the province of Pomerania,

16) the law of July 19, 185. 194.); concerning the Duchies etc. of rustic places in Silesia (Law Collections 1832. p. 194);

17) the law of April 25, 1835. to facilitate the redemption of the right of reversion in the province of Westphalia (Law Collections 1835. p. 53.);

18) the cabinet decree of October 26, 1835. on the determination of standard prices for reserved services in the scope of the Brandenburg Provincial Association (Law Collections 1835. p. 228.);

19) the declaration and amendment of the law of April 8, 1823. on the regulation of the manorial and peasant relations in the Grand Duchy of Posen and in the districts reunited with the Province of Prussia, the Kulm and Michelau districts and the rural area of the city of Thorn of July 110, 1836 (Law Collections 1836. p. 204.);

20) the Cabinet decree of June 19, 1837. concerning the redemption of the domanial pensions at 25 times the amount;

21) the Cabinet decree of February 17, 1838. concerning the replacement of the Hülfsdienste in the province of Prussia (Law Collections 1838. p. 237.);

22) the decree of November 28, 1839, concerning the allodification \* of the sovereign fiefs in the Duchy of Westphalia that do not belong to the peasant class (Law Collections 1840. p. 5.);

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\* Note: See the Wikipedia entry for “allod”. In the law of the Middle Ages and early modern period, especially within the Holy Roman Empire, an allod is an estate in land over which the allodial landowner (allodiary) had full ownership and right of alienation.

23) §§. 33. and 35. of the law of December 22, 1839. concerning the legal relations of landowners and the redemption of real estates in the counties of Wittgenstein-Berleburg c. (Law Collections 1840. p. 6.);

24) the order for the redemption of real burdens in the Duchy of Westphalia of June 18, 1840 (Law Collections 1840. p. 156.);

25) the provisions under No. 3. and 5. in §. 1. of the law of June 18, 1840. on the legal relationships of land ownership and on the redemption of real rights in the Principality of Siegen (Law Collections 1840. p. 151.);

26) the law of July 4, 1840. concerning the redemption of real burdens in the former Nassau districts and in the city of Wetzlar with territory (Law Collections 1840. 6. 195.);

27) the law of June 30, 1841. for the facilitation of the redemption of commercial etc. benefits liable on real property (Law Collections 1841. p. 136.);

28) the law of January 31, 1845, concerning the admissibility of contracts on irredeemable money and grain levies (Law Collections 1845. p. 93.);

29) the law of July 18, 1845, concerning the redemption of services in those parts of the province of Saxony in which the redemption order of June 7, 1821, applies (Law Collections 1845. p. 502.);

30) the law of October 31, 1845, concerning the redemption of services in the province of Silesia (Law Collections 1845. p. 682.);

31) the 3rd of the law of February 8, 1846. because of the preclusion of the claims of former owners of peasant places eligible for regulation in the Grand Duchy of Posen, in the former Kulm and Michelau districts and in the rural area of the city of Thorn (Law Collections 1846. p. 219.);

32) the provisional decree of December 20, 1848., concerning the interim regulation of landlord-farmer relations in the province of Silesia (Law Collections 1848. p. 427.);

33) the law of November 19, 1849, concerning the determination of the normal prices and normal market rates to be observed in the redemption of real burdens (Law Collections 1849. p. 413.).

The provisions of the laws not repealed above which conflict with or cannot be reconciled with the provisions of the present Act shall also be repealed.

First section. - Authorizations which are revoked without compensation.

§. 2. The following authorizations, insofar as they still exist, are hereby revoked without compensation:

1) The superior property of the feudal lord and the rights arising solely from the same and not described as continuing in p. 5. in all fiefs situated within the state, with the sole exception of the throne fief;

2) the superior property of the lord of the manor or land and of the hereditary tenant, likewise the right of ownership of the hereditary tenant; the hereditary tenant and the hereditary tenant acquire full ownership on the day on which the present law becomes final and only on the basis of the same;

3) the claim to regulation of an allodification interest for the abolished feudal lordship in those parts of the country which formerly belonged to the Kingdom of Westphalia, the Grand Duchy of Berg, the French-Hanseatic Departments or the Lippe Department;

4) the right of reversion to land and legal titles of any kind within the state, irrespective of whether the state, moral persons or private individuals are the beneficiaries;

5) the entitlement of the grantor or the beneficiary of the interest to arbitrarily increase the canon or interest to which he is entitled;

6) the pre-emptive, proximity and retraction rights to real estate, with the exception of those listed in p. 4;

7) the obligation to work on land in return for the customary daily wage in the area;

8) the power to demand that a private landowner plant or maintain his land with mulberry trees;

9) the obligation of the so-called "Flämingschen Kirchgang \*", which is liable on real estate.

\* Note: Part of the district of Sangerhausen was built by Dutch colonists, who brought into practice a legal custom that has not yet been erased (in 1850), the so-called Flämingsche Kirchgangsrecht (Flemish Church attendance rights). The continuation of this exorbitant property restriction is officially documented in the Sächsische Provinzialrechte, Theil I, published by the Oberlandesgerichtsrath Pinder on behalf of the Justice ministerium.

From page 253 of "Die landes kultur gesetzgebung des Preussischen Staates" by Adolf Lette, Ludwig Mortiz Peter von Rönne available from Google Books.

§. 3. Furthermore, the following authorizations, insofar as they still exist, are revoked without compensation:

1) The right to claim a share or an individual item from an estate by virtue of a property, land or judicial relationship;

2) the right, still existing in some parts of the country, of the person entitled to levies and services to object to the fragmentation of the land subject to the obligation;

3) all levies and payments of the non-residents to the previous lordship of the manor, estate or court, insofar as they are derived from this relationship and are not based on other contracts;

4) the contributions and services under various names for the transfer of the burdens of private jurisdiction and manorial police administration;

5) all duties and services, which, apart from the costs, the collection of which is based on ?? \* statutory fee tariffs are established for individual courts ?? be paid on the occasion of the same; ?? regarding services and performances related to hunting;

\* The scanning of the German book is missing a few words due to what appears to be a finger blocking a corner of the page, indicated here by "??".

7) all services, duties and payments for the guarding of manorial buildings and land;

8) all services for the personal needs of the lord of the manor and his officials, e.g. services for cleaning the houses and farms, caring for the sick, guarding and ringing out the corpses, traveling for the lord of the manor and his officials;

9) all levies for the furnishing or running of family members of the estate or lord of the manor; in particular the right, occurring in some areas, to have the geese of the peasant landlords plucked;

10) the levies and services derived from the former manorial, manorial and landlord rights, which, without belonging to the public tax revenue, have the nature of taxes; in particular the levy for the use of running water in private rivers, which still exists in some parts of the Rhine Province and the Province of Westphalia, or otherwise.

These charges for the use of running water do not include mill levies;

11) all charges for permission to keep certain types of livestock or bees on one's own land.

12) the obligation to sell wax and other agricultural products to the lord of the manor;

13) the power derived from the manorial or landowner's right to use and appropriate the trees and shrubs scattered on other people's farmyards, gardens, fields and meadows;

14) the power of the lord of the manor to dispose of the open spaces within the village that are not necessary for the roads, under the name of street justice or floodplain right, insofar as this is derived from the manor's police jurisdiction.

The ownership of these properties, insofar as they have not already been transferred to the private use of the lord of the manor or a third party before the promulgation of the law of October 9, 1848 (Law Collections 1848. p. 276.), or have been divided between the lord of the manor and the village community in a legally binding manner, falls to the local community as such, which, however, must henceforth also bear the burdens previously associated with them, e.g. the maintenance of the village road, bridges, footbridges, etc.

The above provisions shall not enter into force until the new municipal regulations are introduced in the individual municipalities.

15) All direct counter-performances which were incumbent on the entitled person in the case of all the services set out in §. 2. and the above under 1. to 14. as well as the funeral, wedding and child transport, doctor and midwife services to be provided by the lord of the manor.

However, to the extent that the services, duties and payments referred to in this paragraph have been expressly assumed for the loan or sale of a property, their annulment free of charge shall be excluded.

The extent to which taxes on changes of ownership are to be waived without compensation is determined in SS. 36. ff. of the present law.

§. 4. The pre-emptive right to real estate established by contracts or testamentary dispositions, the pre-emptive right of those who jointly own an object in full ownership to their shares, as well as the reversionary right of co-heirs under the Rhenish Civil Code, remain in force.

A statutory right of pre-emption also applies to all parts of real property which had to be sold for charitable purposes as a result of the right of expropriation exercised or granted by the state, if the expropriated real property is subsequently no longer necessary in whole or in part for the intended purpose and is to be sold.

The right of pre-emption is vested in the current owner of the property reduced in size by the original acquisition. Whoever has exercised the right of expropriation must notify the entitled owner of the intention to sell and the purchase price offered, who loses his right of pre-emption if he does not declare it within two months. If the notification is omitted, the entitled person may assert his claim against any owner. Asserting a claim against the owner.

§. 5. The termination of the superior property of the feudal lord or lord of the manor or land and of the hereditary tenant as provided in §. 2. nos. 1 and 2. The abolition of the superior property of the feudal lord, lord of the manor or land and lord of the hereditary interest, as well as the property of the lessor of the hereditary interest, does not at the same time result in the abolition of the rights to duties or benefits or expressly reserved uses arising from these relationships; rather, these rights shall continue to exist, unless they have been specifically declared abolished in the present law, with the same preferential rights in the property of the obligors as they have had in it up to now.

## Second section. - Redemption of encumbrances in rem.

### Title I. - Redeemability.

§. 6. All permanent charges and services which are encumbered with real property or rights (encumbrances in rem) which are or have been held by way of leasehold or hereditary interest shall be redeemable in accordance with the provisions of this section.

Excluded from redeemability under the provisions of this Act are public charges, including municipal charges, municipal levies and municipal services, as well as charges relating to a dyke or similar association, and charges and services for the construction or maintenance of churches, parish and school buildings, if the latter are not the consideration for a redeemable real charge, in which case such charges shall be redeemed at the same time as the latter.

Duties and payments to which the municipalities and the said societies are entitled from general legal relationships, e.g. the manorial relationship, over the right of tithing, are not excluded from the redemption.

§. 7. The present law shall not apply to land rights (servitudes) and other relationships to be redeemed in accordance with the principles of the common property division order, unless the third section contains an exception.

§. 8. In order to determine the compensation due to the entitled party, the annual monetary value of the real charges to be redeemed shall be determined in accordance with the provisions of the following titles.

### Title II - Services

§. 9. If, for services occurring annually during the ten years in question, and for services not occurring annually during the last twenty years before the provocation was made, or, if a change in monetary compensation has occurred between that time and the enactment of the law of October 9, 1848., during the ten or twenty years prior to the promulgation of the said law, such compensation shall be paid and accepted without objection. If, during the ten or twenty years prior to the promulgation of the said law, monetary compensation has been paid and accepted without objection, this



compensation and, if it has changed during these periods, the average of the amounts paid shall form the basis for determining the monetary value.

In the absence of such prices, a distinction must be made between services calculated by the day and services calculated by the amount of work.

§. 10. If the services are determined by days, their value shall be calculated according to the normal prices determined for the district concerned (§§. 67 ff.).

When determining such normal prices, both for manual and clamping services, the following must be taken into account:

- a) the duration of working hours;
- b) the type of work;
- c) the seasons in which such work is to be performed;
- d) the nature of the labour force commonly used in the area.

§. 11. If, on the other hand, the services are determined according to the extent of the work to be performed, or if they are unmeasured, their value shall be determined by an arbitrator's decision as to the costs to be incurred by the person entitled to the service in order to perform the work incumbent on the person liable to pay the service by his own or hired team, by servants or day labourers. In this respect, the lesser degree of perfection in which the work is usually performed by the person obliged to perform service shall be taken into account. §. 12. With regard to the costs of keeping a team, servants and day labourers, standard rates (cf. §§. 67. ff.) shall also be determined. §. 13. If the services are determined both by position and by the extent of the work, their value shall be determined in accordance with the provisions of §§. 11. 12.

§. 14. The value of building services which are not determined by days (§§. 10.) shall be estimated in each individual case according to their average annual amount. The type of construction of the buildings to which the services must be rendered, their extent and structural condition at the time of the estimate, the type of service rendered by the obligor and, in the case of transportation, the distance from which the materials must be brought and the nature of the roads shall be taken into account.

If the parties do not agree on the value, it must be determined by arbitration.

For districts in which, at the discretion of the district commissions (§. 67. ff.), there is a need for this and the nature and construction of the buildings permit it, the district commissions may, with the assistance of a building expert, determine the standard saw regarding the items to be taken as a basis for the redemption calculation.

§. 15. The so-called rolling services occurring in some parts of the country, i.e. those in which the nature of the service or the extent of the service or both at the same time is determined according to the economic establishment of the obligor at any given time, shall, if their extent or number is not fixed, be taken into account, insofar as they recur annually, according to the average of the services rendered in the last ten years before the provocation is made, but insofar as they recur in longer periods, according to the average of the services rendered in the last twenty years before the provocation is made.

§. 16. If, in the cases of §. 15, no other measure for the distribution of the compensation can be proven to be legally binding, then, irrespective of whether at the time of the compensation, manual labour or no labour at all is being performed, the compensation for manual labour shall be paid by all landowners in proportion to the size of their fields, the compensation for the tillage service shall be paid by all landowners in proportion to the area of their fields, but the compensation for the manual service shall be divided equally among the existing properties, unless a different ratio, which is then also decisive for the compensation, has taken place when the services were rendered.

The value of the consideration and any compensation to be granted by the beneficiaries for the surplus value shall be distributed in the same proportion.

As a rule, the area of the fields is determined without surveying according to land registers, cadastres or otherwise in the simplest possible way; however, if a special survey has already been carried out, or if such a survey is applied for by one of the two parties at his own expense, it shall be taken as a basis.

§. 17. If the services to which a property is entitled are not all used in accordance with the customary mode of management in the area,

compensation shall be paid only for those services which the property requires for economic purposes.

This need shall be determined by an arbitrator's decision in accordance with the customary manner of hospitality in the area.

However, these provisions shall not apply in those cases in which the entitled party has the power to transfer those services which he cannot use himself to another party or to have such services paid for by the obligor.

### Title III - Fixed levies in grains.

(18) Fixed levies in grains are understood to mean only those levies which recur annually or at other specified periods and which are paid in specified quantities in grains of stalks and other crops which have a general market price.

§. 19. The value of these levies shall be determined according to the Martini market price which results from the average of the last four and twenty years before the provocation is made, if the two most expensive and two cheapest of these years are excluded.

§. 20. The Martini market price is the average price of the fifteen days in the middle of which the Martini day \* falls.

\* Note: The feast day of St. Martin of Tours is associated Martini Markets (Martinimarkt or Martinsmarkt) or Fairs in Germany and in Switzerland.

§. 21. For those areas where the busiest grain traffic takes place at a time of year other than around St. Martin's Day, a different time may be determined in the manner described in §§. 67. ff. can be determined.

§. 22. These average market prices (§§. 19. to 21.) are published annually in the Official Gazette.

§. 23. The market plan, the prices of which are to be used as a basis, shall be determined in accordance with the provisions of §§. 67 et seq.

§. 24. If a region has no regular grain markets, a neighboring real market place shall be designated for the same. The prices of this market place shall be compared with the prices of that region in the four and twenty years preceding the promulgation of the present law, with the two most expensive

and the two cheapest years omitted, and a permanent normal ratio of the two prices shall be calculated therefrom. The price determinations to be made for that region shall then be based on the price of the assumed market place and increased or decreased according to the permanently determined normal ratio.

§. 25. If a district in which a real market place is situated is so extensive that in its more remote parts the prices are regularly lower or higher than at the market place itself, the whole district shall be divided into smaller districts and for each of them a permanent normal ratio to the price of the market place shall be determined.

§. 26. Five percent shall be deducted from the prices to be determined in accordance with §§. 19. to 25 on account of the lower quality of the cereal in relation to the marketable grain. No special deduction shall be made for market transportation costs; however, these shall be taken into account when determining the normal conditions in accordance with §. 25.

§. 27. If fine prices are recorded on a market place (§. 23.) for certain types of grain or for grains of a particular quality, e.g. seed grain, miller's grain, the duties on such grains must be estimated in accordance with Title IV.

§. 28. In the case of those grain rents which have been legally stipulated on the basis of the previously valid regulation and redemption laws as compensation for abolished real burdens, and which are paid in money according to a ten-year or more average of grain prices, the annual monetary value shall be determined according to the amount of money which was to be paid on the due date preceding the date on which the provocation (§. 94.) was first made.

If, on the other hand, such a grain rent has to be paid in money according to a lower than ten-year average of grain prices, or according to the annual market price of a certain place, the annual monetary value is determined according to the average of the market prices of this place which are decisive for the payment. In determining this average, the prices of the last four and twenty years before the provocation is applied shall be taken as a basis, with the two most expensive and the two cheapest being omitted.

Title IV - Fixed taxes in kind not consisting of grains.

§. 29. If, in the case of fixed levies in kind not consisting of grains, which recur annually, during the ten years laid down, but for those recurring in longer periods, during the last twenty years before the provocation is made, or, if between that time and the promulgation of the law of October 9, 1848. If, during the last ten or twenty years prior to the promulgation of the said Act, a change in the monetary benefit has occurred, monetary remuneration has been paid and accepted without objection, these remunerations and, if they have changed within the said periods, the average of the amounts paid shall be taken as a basis for determining the monetary value of these levies.

§. 30. If the annual monetary value of such duties in kind cannot be determined in accordance with the provisions of §. 29, normal prices (§§. 67. et seq.) shall apply, in the determination of which, as a rule, the prices of the last twenty years shall be taken into account and, in the case of such objects whose quality may be different, it shall be assumed that the duty is to be paid in the lower quality.

However, if in a given case the duty to be paid is determined otherwise in a document, the established normal prices are not to be taken as a basis; rather, the value of the levy must then be specially determined by arbitration.

§. 31. The provisions of section 30 shall not apply to levies on wine. The annual monetary value of such levies must rather, if the provision of §. 29. does not apply, be determined by arbitration, taking into account the location of the product and the price in the twenty years prior to the filing of the provocation.

## Title V. - Natural fruit tithe.

§. 32. If, during the ten years preceding the filing of the provocation, or, if between that time and the promulgation of the law of October 9, 1848. If, during the ten years prior to the promulgation of the said Act, the natural fruit tithe has been levied again, or if, during the ten years prior to the promulgation of the said Act, a rent has been paid for the natural fruit tithe or a levy in money or grain has been accepted instead of the natural fruit tithe without objection, the annual amount of the rent or levy and, if these amounts have changed, the average of the amounts paid shall constitute the annual value of the right of tithe. If such rents or levies have been paid in grains, they shall be assessed in money in accordance with Title III. §§. 19. to 27.

§. 33. If the conditions of Section 32 are not met, the yield of products in kind which the person entitled to the tithe can obtain from the tithe on average over the years shall be assessed by an expert according to the condition and type of management of the land subject to the tithe when the provocation is made. In the case of grain, this yield shall be determined separately in grains and straw.

The price of the grains shall be determined in accordance with the provisions of Title III, §§. 19. to 27; however, the deduction of five percent provided for in §. 26. shall not apply. In determining the price of other products in kind, the provisions of Title IV. shall apply.

In order to determine the annual monetary value, the costs which the entitled person must incur in order to receive the net income are deducted from the gross income.

It is left to the experts to assess the extent to which the tithe registers, land tax registers and other information to be obtained at their discretion are sufficient for the findings to be made by them without surveying and assessment.

§. 34. The above regulations concerning tithes also apply to the sheaf lease of the so-called sheaf farms.

§. 35. From the day on which the present law comes into force, tithes may not be claimed from lands from which tithes have not yet been received. The redemption of the tithe in accordance with the provisions of this title therefore also includes the abolition of the tithe from new land (land-clearing "Neubruchs-" and "Red-" tithes ) and no special compensation may be demanded for it.

## Title VI - Change of ownership levies.

§. 36. The right to demand levies for changes of ownership (land, feudal tenure, entry fees, profit fees, etc.) in the case of changes that occur in any way in the dominant estate shall be revoked without compensation to the entitled party.

§. 37. All unfixed taxes on changes of ownership which have newly arisen after the introduction of the edict of September 14, 1811. for the promotion of the culture of the land (Law Collection 1811. p. 300.) shall

continue to apply without compensation to the entitled party, notwithstanding the validity of the other provisions of the sale or award. Duties that must be paid in a sum determined once and for all in the event of changes in ownership are not to be considered for unfixed duties for changes in ownership.

§. 38. Henceforth, no more than one type of change of ownership levy may be paid from one and the same property. If several types of property change charges have been paid in addition to each other, it shall be presumed that the higher of these charges is a land charge and therefore continues to exist, whereas the lower one belongs to the charges abolished in §. 3.

§39. those duties which, in the case of changes of ownership, occur under the names of recording fees, sealing fees, confirmation fees, delivery fees, issuing fees, counting fees or under other names indicating judicial acts, shall also be presumed to be court fees in cases in which no other change of ownership duties are paid in addition to them, and shall be deemed to belong to the duties abolished under §. 3. no. 5.

§. 40. Proof that a property is obliged to pay a change of ownership tax can no longer be furnished by invoking observance. On the other hand, it is sufficient for this proof if an owner of the land has acknowledged the obligation in a public deed, even without stating the legal basis for it. However, even such an acknowledgment cannot effect the continuation of such taxes on changes of ownership which are unconditionally canceled pursuant to §§. 36. to 38.

§ 41 In order to determine the value of the change of ownership charges to be redeemed

1) the number of cases of change of ownership to be assumed over a century,

2) determine the amount of the change of ownership levy.

§. 42. As a rule, three cases of change of ownership are to be counted in a century.

However, if the change of ownership levy

1) only for all sales to persons other than the owner's descendants, two cases of change are counted as one century,

2) The same takes place if the levy must be paid by a descendant for every type of acquisition of ownership;

3) If the levy is payable only in the case of certain types of sale to parties other than descendants, but not in the case of others, only one case of change is counted as one century;

4) The same takes place if the levy is payable only in the case of certain types of acquisition of ownership by a descendant, but not in the case of others;

5) If the levy is payable exclusively or additionally in cases other than the types of acquisition of ownership mentioned under 1 to 4 (e.g. on marriage of the owner), the occurrence of each such case shall be counted as a case of change for one century.

However, more than three cases of change should never be counted in a century.

§. 43. If the amount of the change of ownership levy is not legally determined once and for all or as a percentage of the value or purchase price of the obligated property, the average of the amounts actually paid or payable in the last six cases of change and, if this cannot be determined, the average of the known amounts shall be taken as the basis.

If it is not possible to determine the amount of the winnings of millennial owners in this way, half the amount of a full winnings of the actual owners of the same property shall be assumed.

If the amount of the change of ownership levy in a given case cannot be determined precisely because the death and the profit were treated together as one sum, half of this sum shall be assumed to be the amount of the profit monies.

§. 44. If the change of ownership levy consists of a percentage of the value or purchase price of the obligated property, the value or price on which the redemption is to be based shall be determined according to the fair market value of the property to be assessed by arbitrators.



Buildings and inventory items are only to be taken into account in this assessment if the obligation to pay the change of ownership levy also extends to them.

However, a deduction is made from the purchase value determined in this way:

a) the capital paid by the present or a former owner of the property to redeem services, charges, land rights or other encumbrances of the property, provided that the redeemed encumbrances were not imposed on the property without the consent of the person entitled to the change of ownership charge, otherwise the deduction of those capital amounts is inadmissible;

b) twenty percent of the value of the land belonging to the property;

c) fifty percent of the value of the buildings and inventory items.

§. 45, if the amount or percentage of the change of ownership levy differs according to the diversity of the cases of change of ownership, the average of the amounts to be paid in a century pursuant to §. 42. shall be regarded as the unit of the amount or percentage of the change of ownership levy.

Here, too, no more than three cases of change may be expected in a century.

If there are more than three cases of change in one century, the average of the three highest amounts of the change of ownership levy is decisive.

§. 46. The hundredth part of the sum of those individual amounts which would be payable in accordance with the above provisions in cases of change of ownership affecting a century shall constitute the annual value of the right to be redeemed.

§. 47. From the time at which a provocation for redemption is filed with the settlement authority, the change of ownership levy may no longer be demanded from those properties to which the provocation extends (sections 94 and 95) for cases of change of ownership occurring later.

On the other hand, the redemption annuity to be determined is to be paid by the obligors from this point in time.

§. 48. Subsequent pensions are not further determined in the event of the redemption of the change of ownership levies.

§. 49. The recovery of all types of property alteration levies paid prior to the promulgation of the present Act is only permissible if the payment was either made subject to a written reservation of recovery or was enforced by administrative enforcement, although the obligor had disputed his payment obligation prior to the enforcement of the enforcement.

## Title VII - Fixed monetary levies.

§. 50. Fixed annual monetary contributions are invoiced according to their annual amount.

§. If a fixed monetary levy is not payable annually, but after a certain number of years, its amount is divided by the baht of these years, and the quotient then represents the annual value of the levy.

§. 52. Those pensions for which the capital by which they can be redeemed in the future is determined in advance at four percent in accordance with the previous statutory redemption rate for capitalization shall also be charged as fixed monetary levies according to their annual amount.

The same applies to the predetermined interest on the redemption capital determined in accordance with the previous statutory redemption rate and in accordance with a specially calculated compensation pension, which only the obligated party is entitled to terminate.

§. 53. If, on the other hand, in the cases referred to in section 52, a time limit for payment of the redemption capital has been fixed in a legally binding manner or the power to terminate the same or the redemption annuity has also been granted to the beneficiary, even if only under certain conditions, then these determinations shall merely stand, and the provisions of the present law, with the exception of sections 31, 92, 93, shall not apply to cases of this kind.

§. 54. According to these same principles (p. 53.), annuities arising from common-law portions are also subject to redemption under the provisions of the present law only if the beneficiary has waived the right of termination to which he is legally entitled in respect of such rents.

§. 55. The present law, with the exception of SS. 91, 92, 93, applies to annuities for which a rate other than the previous statutory rate of redemption of the capitalization of four percent has been fixed in advance in a legally binding manner, as well as to interest on such redemption capital, in the determination of which a rate other than this previous statutory rate of redemption has been applied, and finally to interest on such redemption capital which has been determined by way of a settlement not concluded on the basis of a special determination of value and without taking as a basis the then statutory rate of redemption. 91. 92. 93. fine shall apply.

§. 56. In the cases of SS. 53. 54. 55. the beneficiary shall, however, be free to apply for settlement in pension certificates in accordance with the law on the establishment of pension banks if the obligor does not prefer settlement in accordance with the provisions of the contract.

However, the transfer to Rentenbank may be refused by the authority to the extent that the annuities or interest to be transferred exceed two thirds of the net income of the property to be determined in accordance with §. 63.

## Title VIII - Other levies and benefits.

§. 57. The annual value of the obligation to keep seed cattle and to feed cattle shall be determined on the basis of normal prices.

Such standard prices shall be determined for each head of suckler cattle in the case of the obligation to keep seed cattle and for each head of cattle to be fed in the case of the obligation to feed cattle in accordance with §§. 67. ff.

§. 58. The annual value of commercial trade and all other duties and services which do not belong to those listed in Titles II to VI shall be determined in each individual case in accordance with those provisions of the present section which appear to be applicable thereto, but if these provisions do not offer any guidance, at the discretion of an expert.

The repeal of §§. 1. to 5 of the Industrial Code of January 17, 1845. mentioned rights, insofar as they still exist constitutionally, is not carried out according to the provisions of the present law, but according to those of the Industrial Code (Law Collections 1845. 6. 41).

## Title IX - Consideration.

§. 59. The annual value of the consideration of the beneficiaries shall also be determined in accordance with the above provisions of this section. However, this shall not apply to such consideration and obligations whose annulment is subject to the provisions of the *Gemeinheitstheilungs-Ordnung* of June 7, 1821.

## Title X. - Compensation of the entitled persons.

§. 60. The sum of the calculated annual monetary value of the consideration (Title IX) shall be deducted from the sum of the calculated annual monetary value of the redeemable real rights (Titles I to VIII). The surplus constitutes the amount of money, the redemption of which is carried out according to the principles stated in §§. 64. to 66, insofar as no reduction of the same must occur according to §. 63. If the performance and consideration do not take place between the same persons, but the latter is due to a third person, as is the case, for example, in some parts of the country with the obligation of those entitled to tithes to build the church, or a part thereof, then no compensation takes place, rather the value of the consideration is granted to the person directly entitled to the latter.

§. 61. If the monetary value of the consideration exceeds the annual monetary value of the principal services, the surplus value of the consideration shall also be redeemed in accordance with the provisions of Section 64.

An exception to this is only made if the beneficiary is entitled for a special legal reason to waive the benefits against the will of the obligor and thereby release himself from the consideration.

§. 62. If the consideration of a person entitled to services consists in the surrender of a certain share of the crops harvested or threshed, as for example in the case of the tithe-cutting or threshing-gardener relationship, the surplus value of this consideration is remunerated, as a rule in land, in accordance with the provisions of the *Gemeinheitstheilungs-Ordnung*. However, when determining this surplus value, the value of all payments to be made by the person liable to pay service to the beneficiary, which have not been canceled in accordance with SS. 2. and 3. shall be set off against the value of the said consideration.

§. 63. The owner of any place (house or farmstead together with accessories) shall be entitled to demand that, when the compensation to be paid for the real encumbrances to be redeemed is determined, one third of the net income of the place shall remain with him, and that therefore, to the extent necessary for this purpose, the compensation for the real encumbrances to be redeemed shall be reduced.

However, such money and grain rents which have been legally stipulated as compensation on the basis of the previously valid regulation, redemption and communal division laws are not subject to such a reduction.

If the obligated job holder has several beneficiaries who must accept a reduction in their severance pay, the reduction shall be in proportion to the size of the severance pay.

The net income of the place shall be determined as follows. The common purchase value of the place, taking into account all encumbrances and charges resting on it, as well as all rights to which it is entitled, shall be determined by arbitrators. Then four percent of this purchase value shall be added to the annual value of all redeemable real encumbrances of the place after deduction of the consideration to be taken into account pursuant to §§. 59. and 60. The sum of both represents the net income of the place.

§. 64. The amount of money determined in accordance with §§. 60. and 61. or §. 63. may be redeemed by the party obliged to do so by making a cash payment of eighteen times the amount to the entitled party.

Unless otherwise agreed, payment must be made no later than the date of execution.

If the obligor does not wish to make such a redemption by capital payment, the redemption shall be made in accordance with the provisions of the law of today's date on the establishment of pension banks.

If the obligor wishes to effect the redemption by paying eighteen times the amount in cash, the beneficiary is nevertheless free to demand the redemption at twenty times the amount of the annual pension in pension bonds. If the beneficiary chooses this form of settlement, the obligor shall make the cash payment of eighteen times the amount to the treasury, which in turn shall make the payments due to the obligor to the Rentenbank \* in accordance with the law on the establishment of pension banks.

\* Note: During the course of the German 'peasant liberation' in the first half of the 19<sup>th</sup> century, state mortgage banks called 'Rentenbanks' were established in the western provinces of Prussia and in many other German states.

Further details are set out in the Rentenbank Act.

§. 65. If a plot of land has been transferred to hereditary tenancy, hereditary interest or ownership by means of a written contract drawn up before the promulgation of the present law against payment of a canon or interest and other payments outside of a landlord-farmer regulation or redemption or without establishing a landlord-farmer relationship, the provisions of §§. 63. and 64. shall not apply.

Rather, in such a case, the canon or interest, as well as the monetary value of any other benefits still stipulated, may be redeemed at twenty times the amount after settlement of the monetary value of the counter-performance, and only at the request of the entitled party through the intermediary of the annuity banks, and at the request of the obligor only by cash payment of the same after prior six months' notice. The obligor is authorized to redeem the capital in four consecutive one-year periods, calculated from the expiry of the notice period, in equal parts. However, the entitled party is only obliged to accept partial payments amounting to at least one hundred thalers. Any arrears shall bear interest at five percent per annum.

Incidentally, the provisions of §§. 53. 55. and 56. also apply here.

Excluded from the provisions of SS. 64. and 65. are the real burdens to which churches, parishes, sextons' offices and schools are entitled. The determination of their future definitive redemption shall be reserved to a special law; until that time, the monetary rents determined in accordance with the present law shall be paid directly to the said institutions.

§. 66. In the event of the redemption of real encumbrances in accordance with the provisions of this Act, there shall be no reduction in the settlement on account of the property taxes imposed or to be imposed on the obligated properties, nor shall the taxes to be paid by the entitled properties for the redeemed real encumbrances be transferred to the obligated properties.

On the other hand, until the redemption has been carried out, the statutory provisions on the claims of the obligated parties to compensation

for these property taxes or to a deduction from the benefits on account of the deemed property taxes shall apply.

Title IV. of the Act of April 21, 1825. No. 938. (Law Collection 1825. p. 74.);

Title IV. of the Act of the same day, No. 939. (Collection of Laws 1825. p. 94.);

Title IV. of the Act of the same day, No. 940. (Collection of Laws 1825. p. 112.);

§. 2. of the law of June 18, 1840. on the legal relations of land ownership etc. in the Principality of Siegen (Law Collection 1840. p. 151.);

§. 1. of the law of June 18, 1840. on the conditions affecting land ownership in the Duchy of Westphalia (Law Collection 1840. p. 153.);

§§. 16. et seq. of the Nassau Law of February 10 and 14, 1809.

In the case of a conversion into an annuity or a redemption by capital in accordance with the provisions of §. 127. of the order of July 13, 1829. concerning the redemption of real estates in those parts of the country which formerly belonged to the Kingdom of Westphalia (Law Collection 1829. p. 65.), of §. 131. of the order of June 18, 1840. concerning the redemption of real burdens in the Duchy of Westphalia (Collection of Laws 1840. p. 156.) and of §. 107. of the law of July 4, 1840. concerning the redemption of real burdens in the former Nassau territories (Collection of Laws 1840. p. 195.). p. 195.), a reduction of the settlement annuity or the settlement capital on account of the land tax has already occurred, such annuities, as well as the interest on such settlement capital, even if the conditions of §. 52. of the present law exist, can nevertheless only be redeemed in accordance with §. 64. of the present law if the amount which was deducted in the conversion or redemption on account of the land tax is added back to the annuity or the capital. If the obligor does not wish to accept this, the present law shall not apply to the proposed interest, but the proposed redemption annuities may in such a case be redeemed at five and twenty times their amount by capital payment at the request of the obligor.

Such a redemption of capital takes place after six months' notice has been given. The obligor is authorized to pay off the capital in equal

instalments in four consecutive one-year periods, calculated from the expiry of the notice period. However, the entitled party is only obliged to accept partial payments amounting to at least one hundred thalers. Any arrears shall bear interest at the rate of four percent per annum.

#### Title XI - Determination of normal prices and normal market values.

§. 67. For the determination of the normal prices and normal market values (cf. §§. 10. 12. 21. 23. to 25. 30. 57.), appropriate districts shall be determined by the settlement authority. A commission shall be formed for each such district, consisting of several competent residents of the district to be elected in accordance with §. 68. and a chairman to be appointed by the settlement authority without voting rights. On the basis of its investigations, the commission shall make proposals to the settlement authority on the price districts to be formed in the district, on the standard prices for each of these districts and on the standard market prices to be accepted.

The dispute resolution authority shall confirm these proposals or decide if the members of the Commission are unable to reach agreement. The members of the Commission have the right of appeal against this decision to the Review Board for National Cultural Affairs, which they must lodge with the Disputes Committee within three weeks of the date of publication. The Appeals Board shall make the final decision.

§. 68. The following rules shall apply to the election of the members of the commission to be drawn from the district residents:

1) Half of the number of these persons is chosen by the obligated landowners, the other half by the entitled persons;

2) If the district comprises only one rural district, an elector shall be elected in each municipality of the district, under the direction of the municipal council, by the owners of the land subject to real charges. All the electors of the district shall then be called together by the district executive committee, and under the chairmanship of the latter, those present shall elect two or more members to the district commission at the discretion of the settlement authority.

The authorized persons in the district, on the other hand, directly elect the same number of commission members under the chairmanship of the district executive committee;



3) If the district comprises several rural districts, two members of the commission shall be elected in each of them, both by the obligated and the entitled parties, in the manner described under No. 2;

4) All these elections shall be by an absolute majority of the votes cast by those present, in accordance with the electoral regulations of May 31, 1849, for the election of the deputies;

5) the examination and confirmation of the elections is the responsibility of the Disputes Authority;

6) The right to elect the Commission members for the party that has refused or failed to elect them shall also pass to this authority.

§. 69. From ten to ten years, a revision of the established normal prices and normal market rates shall be carried out in the manner described on page 67.

§. 70. The elected members of the district commissions receive travel and subsistence expenses from the state treasury; 1 Rthlr. 15 Sgr. per diem and travel expenses of 10 Sgr. per mile.

The district residents shall not be entitled to compensation for tires and other expenses incurred for the purpose of electing the members of the district commissions.

§. 71. As a rule, the market and standard prices of the district in which the place designated for delivery of the charge or performance of the obligation is situated shall apply. If this is not determined, or if the charge or service must be delivered or performed at different places, the market or normal prices of the district in which the obligated property is located shall apply.

§. 72. If in individual districts levies and services for the redemption of which standard rates are to be fixed under the present law no longer exist at all or only to a very small extent, the fixing of standard rates may be omitted in such districts with the approval of the Ministry of Agricultural Affairs.

If an assessment is required in such districts, it shall be carried out by arbitrators.

### Third section. - Regulation of landlord and peasant relationships with a view to the granting of property.

§. 73. The provisions of this third section shall replace the edict of September 14, 1811, on the regulation of landlord and peasant relations (Law Collection 1811. &. 281.), as well as the law of April 8, 1823, on the regulation of landlord and peasant relations in the Grand Duchy of Posen etc. (Collection of Laws 1823. p. 49.); they therefore only apply in those parts of the country in which the edict or the law in question have previously been in force.

§. 74. All rural places existing before the introduction of the Edict of September 14, 1811, or before the promulgation of the Cabinet Order of May 6, 1819 (Collection of Laws 1819. p. 153) in the respective parts of the country and not belonging to their owners for ownership, hereditary interest or leasehold rights, which either belong to *lassitic* \* rights in accordance with §§. 626 ff. Title 21. Th. I. General Land Law for cultivation or use, or are encumbered with duties or services to the lord of the manor, both places, however, only insofar as they are granted either as a hereditary right or as a temporary right of use, so that in the event of termination of ownership according to law or custom, they are reoccupied by a landlord:

All such places are eligible for regulation, regardless of their size and nature (whether or not they are arable or threshing fields etc. connected with mills, forges, jars); furthermore, regardless of who is entitled to ownership and whether they are founded on peasant or other land.

The following are not subject to regulation: the places and plots of land given on a temporary lease by contract without the establishment or continuation of a landlord and tenant relationship, as well as the places and plots of land given to domestic, forestry, metallurgical and landlord officials, servants or day labourers, smelters and miners for use with regard to this relationship, regardless of whether they were arable land or not.

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\* Note: *Lassitic* - *Lasser* land law

The name "*Lasser*" comes from Saxon law and refers to the "*Laten*" (half-free) who did not own any property, but only had their property as an inheritance depending on the landlord.

"Lassen, Laten, in the Saxon language unfree farmers, later this is understood to mean farmers with non-inheritable rights to their property. The Lassitian law of Prussia. General Landr. I, 21 §§ 626 fg, is through the according to the separation law of 2. "The regulation that came into effect in March 1850 has now been converted into property."

The Lasser land law was valid in Silesia from the Middle Ages to the 19th century.

- The farm property was not hereditary property, but was leased to the farmer for life.
- After the death of the hereditary landlord or the farmer, a new lease agreement was drawn up.
- The farmer [and his family] was obliged to pay the landlord ground rent, compulsory labour and honours (levies).

§. 75. In addition to the entities specified in §. 74, they are also eligible for regulation if they already existed before the dates specified therein:

a) In the Grand Duchy of Posen, in the Kulm and Michelau districts and in the rural area of the city of Thorn, those places which are owned either as so-called emphyteutic estates for certain years or successions of generations, or as side leaseholds, both types regardless of whether they are in the service of the lord of the manor or are subject to taxation, if their owners are designated in tax or other official registers, urbaria \*, pre-station tables, in letters of grant or contracts as people of peasant status (stan chlopski) or the estates themselves are designated as those held by people of peasant status with common, provincial or local names;

b) in the Proving Prussia the emphyteutic estates granted for specific years or successions.

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\* Note: Urbaria - an urbarium (also rental or rent-roll) was a register of fief ownership and included the rights and benefits that the fief holder has over his serfs and peasants.

Urbaria were also used to record land rent and stock.

§. 76. The right to a grant of ownership is vested in the person who owns the land to be granted for ownership in his own right. Therefore, for example, interim landlords or those who have leased or borrowed the place from the actual landlord have no such claim.

The person who owned the property in his own right at the time of the promulgation of the law of October 9, 1848 (Collection of Laws 1848. p. 276.) is presumed to be the rightful owner. In the case of places not previously held by hereditary rights, this presumption can only be rebutted by deeds in respect of claims arising from the time before the promulgation of the said Act.

§. 77. If, at the time when a vacancy still to be filled under the present law is vacated, there is no longer any person entitled to the conferral of ownership, the obligation of the lord of the manor to refill the vacancy shall cease, and the lord of the manor may freely dispose of the vacancy to third parties.

§. 78. All those who, on the basis of an earlier or the present law, wish to derive claims to regulable positions previously held by them or their decedents, or claims for compensation due to their deprivation, must file these claims with the settlement authority of the district in which the position is located by January 1, 1852, failing which they shall be precluded from doing so.

However, in the province of Posen, in the districts of the Kulm and Michelau districts reunited with West Prussia, as well as in the rural area of the city of Thorn, the provision of §. 1. of the law of February 8, 1846 (Collection of Laws 1846. p. 219.) shall remain in force due to the preclusion of the claims of former owners of peasant posts eligible for regulation, which already occurred on January 1, 1849. On the other hand, the above-mentioned preclusion, which came into force on January 1, 1852, applies to the bodies named in §. 2. of the aforementioned law.

§. 79. From the time at which the present law acquires the force of law, the right to regulation shall be inherited in respect of all places to be regulated under the same, even if their owners die before regulation has been effected, as if the places themselves had already been the property of these owners.

§. 80. In the regulation, the following are taken into account:

a) the rights of the lord of the manor:

1) the right of ownership;

2) the court militia;

3) the right to services, duties in cash or in kind and benefits of all kinds which are redeemable under the present law;

4) the legally redeemable servitudes on agricultural land;

b) the rights of the job holder:

1) the right to assistance in the event of accidents;

2) the obligation of the lord of the manor to represent the holder of the position with regard to public dues and services if the latter becomes incapacitated;

3) the obligation of the lord of the manor to construct and repair the buildings, as well as to supply timber;

4) all redeemable benefits of the manor according to the present law;

5) all legally redeemable entitlements on the manor's land, such as grazing rights, firewood rights, road rights, etc.

§. 81. In the question of the lands belonging to the place, as well as of the rights and obligations to which it is entitled vis-à-vis the lord of the manor, the tenure existing at the time of the promulgation of the Act of October 9, 1848 (Law Collection p. 276.) shall be presumed to be the lawful one. This presumption can only be rebutted by documents.

§. 82. Without being allowed to pay compensation.

a) the owner of the position has the right of ownership and the court defence (§. 80. a. 1. and 2.),

b) the lordship of the manor is exempted from the obligation to provide assistance in the event of misfortune and to represent the manor in the event of public charges and services (§. 80. b. 1. and 2.).

§. 83. The value of the obligation of the lord of the manor to construct and repair buildings, as stated in §. 80. Litt. b. No. 3. for the construction and repair of the buildings, as well as for the supply of timber, must be estimated

according to the average annual amount of these obligations and, in the absence of an association, determined by a judge.

The value of the land rights to be set aside pursuant to §. 80. a. 4. and b. 5. shall be determined and, in the absence of an agreement, established by arbitrators.

For districts in which, at the discretion of the district commissions, there is a need to do so, the latter may, with the assistance of experts, determine the standard saw in respect of the items on which the calculation of compensation is to be based.

§. 84. The annual value of the obligations of the lord of the manor referred to in §. 80. b. 4. as well as of the obligations of the jobholders referred to in §. 80. a. 3. shall be determined in accordance with the provisions of the second section of the present Act.

The sum of the determined annual monetary value of the total obligations of the holder of the post shall be deducted from the sum of the determined annual monetary value of the total obligations of the lord of the manor. If this results in a surplus to be paid by the holder of the post, it shall be redeemed in accordance with the provisions of §. 64.

If the annual monetary amount of the obligations of the lord of the manor exceeds the annual amount of the obligations of the holder of the post, the lord of the manor need not pay such excess. Rather, the owner of the position must be content with the compensation of the mutual entitlements and obligations.

However, this compensation does not take place in the case of places whose owners enjoy a share in the harvest (almonds, sheaves), but the surplus must also be paid to them.

§. 85. The holder of the vacancy shall in any case be entitled to demand that, upon determination of the compensation to be paid, one third of the net income of the vacancy shall remain with him and that, to the extent necessary for this purpose, the compensation of the entitled person shall be reduced.

In order to determine this net income of the place, the common purchase value of the place, taking into account all charges and duties resting on it, as well as all rights to which it is entitled, shall be determined by arbitrators in a

lump sum. Then four percent of this purchase value shall be added to the annual value of all redeemable real rights of the place after deduction of the consideration to be taken into account in accordance with §. 59. and 60. The sum of both represents the net income of the position in cash, one third of which remains with the owner of the position.

The value of the entitlements that can be redeemed in accordance with §. 80. b. 5. is therefore only deducted after the pension still to be paid by the holder of the position has been determined, taking into account the eligibility for pre-stationing.

§. 86. If the land belonging to the peasants' estates is in communion with the manorial estates, an appropriate amalgamation must be carried out ex officio in accordance with the provisions of the commonhold division order. In the case of such a division of common land, the plots of land subject to fine common land of a place to be regulated in accordance with the provisions of the present section may also be included in the settlement plan against the will of the owner thereof and be subject to apportionment.

§. 87. The right of ownership of the place passes to the owner of the place on the date on which the regulation is carried out. This right extends to the site and its appurtenances, the latter also including the wood standing on the land of the site. The execution of the settlement is independent of the settlement to be effected pursuant to §. 86. and may not be delayed by the latter.

If necessary, the exercise of herding on the properties in a mixed situation is to be regulated by an interim property until this consolidation is completed.

§. 88. The right of ownership of the owner of the land also extends to the fossils, insofar as the owner of the land is entitled to them under the provincial laws.

The mineral deposits, ore mines and pits, Ralf and stone quarries, as well as clay, loam, marl pits and peat pits developed by the lord of the manor on farmland before the promulgation of the present law shall remain with the lord of the manor, subject to the compensation to be granted to the owner of the site, to be determined by arbitrators, for the use withdrawn from him and the deterioration of the land.

Nothing in this Act shall change the legal relationships with regard to those hereditary estates and co-ownership rights which have already been acquired at the time of the promulgation of this Act.

In all other relationships that cannot be derived from the property relations to be regulated here, the provisions of the mining legislation shall apply.

§. 89. The lord of the manor shall retain the buildings used exclusively by him and located on the land of the place, e.g. those used as day labourers' dwellings. However, it is obliged to accept the relocation of these buildings to its land if the owner of the site requests this and is prepared to pay the costs.

The landowner is entitled to demand the same relocation, at the expense of the landowner, if the landowner wishes to construct a new building.

In the event of a transfer, the construction site is transferred to the job holder free of charge.

§. 90. The obligation of the lord of the manor to provide for losses to the court defence ceases with the filing of the provocation for settlement. On the other hand, all other obligations of both parties shall continue until the date of execution.

#### Fourth section. - General provisions.

§. 91. In the case of the hereditary transfer of a property, only the transfer of full ownership is henceforth permissible.

With the exception of fixed annuities, encumbrances which are redeemable under the present law may not be imposed on a property from now on.

The obligor is entitled to redeem newly imposed fixed monetary annuities at twenty times the amount after giving six months' notice, unless otherwise stipulated in the contract. However, termination may also be excluded by contract only during a certain period, which may not exceed thirty years, and a higher redemption amount than five and twenty times the annuity may not be stipulated; the former also applies to the annuities referred to in §. 53. to 55.



Contractual provisions contrary to the provisions of this paragraph shall have no effect, notwithstanding the legally binding nature of the other content of such a contract.

§. 92. The termination of capital interests imposed on land or equity may only be excluded for a certain period of time, which may not exceed thirty years.

Capital invested in real property or in equity which has hitherto been irredeemable on the part of the debtor may from now on, as soon as thirty years have elapsed since the promulgation of this Act, be redeemed by the debtor with six months' notice.

These provisions do not apply to all credit institutions.

§. 93. If, in the event of dismemberment of real property, the encumbrances on the real property subject to the provisions of section 64 are not redeemed either by capital or in accordance with the provisions of the law of the present situation on the establishment of pension banks, the main property and the separate properties shall remain liable in solidum for such encumbrances.

On the other hand, the beneficiary is obliged, in respect of those annuities which are not subject to the provisions of §. 64. (§§. 53. to 55. 65. 66. and 91.), to accept a distribution of these annuities among the separate pieces in proportion to their value.

However, he is entitled to demand that those pension amounts which, according to the distribution, amount to less than four thalers per year, be redeemed by capital payment on the part of the obligor.

Section 2 of the Edict of September 14, 1811, concerning the promotion of land cultivation, and Section 2 of the Act of June 18, 1840, concerning the legal relationships relating to land ownership in the Duchy of Westphalia (Law Collection 1840, p. 153), insofar as they conflict with these provisions, are repealed.

§. 94. Both the entitled and the obligated party are entitled to apply for redemption or settlement.

§. 95. The provocation for redemption on the part of the entitled person must always extend to the redemption of all real property which is liable for him on the land of the same community association. If landowners of another municipality are jointly obligated with the provocatees to the natural fruit tithe or to services, the entitled person must also direct his provocation against the landowners of this municipality with regard to all real encumbrances liable for him on their land.

In those parts of the country in which the third section of the present law is applicable, if the entitled person provokes, the application must be made simultaneously for redemption and for settlement to the extent mentioned above. application must be made simultaneously for redemption and for settlement to the extent mentioned above.

The provocation for redemption. On the part of the obligor, it must always extend to any real rights incumbent on his property.

The withdrawal of a provocation is inadmissible.

The provisional redemptions and regulations in the province of Silesia carried out on the basis of the decree of December 20, 1848 (Collection of Laws 1848. p. 427.) are to be officially converted into final ones.

§. 96. With regard to municipal relations and property taxes, the implementation of the present Act shall not result in any changes other than the provisions of Section 66. Rather, the regulation of these relationships remains reserved to the fifth municipal ordinance and the laws on property taxes.

§. 97. The redeemability of encumbrances in rem, as well as the ability to regulate the places not yet possessed as property, shall be assessed solely in accordance with the provisions of the present law, without regard to declarations of intent previously made in this regard, to the statute of limitations or to judgments previously rendered in this regard.

§. 98. The parties involved in a redemption or settlement are free to agree on a settlement in land other than that specified in sections II and III.

§. 99. The present law does not apply to past cases unless its exception is expressly provided for in it. From the gratuitous abrogation of the rights and duties mentioned in section 1. no objection can be taken by those in whose favour it was made against the disadvantages legally connected with

certain acts or omissions, in so far as these acts or omissions occurred before the promulgation of the law of October 9, 1848. Nor do the provisions of section 1 constitute an objection to the payment of arrears that have fallen due by that date, or a claim for reimbursement or compensation.

In those parts of the country for which the three laws of April 21, 1825 (Nos. 938, 1939 and 940 of the Collection of Laws for 1825) have been enacted, however, claims arising prior to the promulgation of the law of October 9, 1848., from the rights abrogated without compensation pursuant to §. 2. Nos. 1 and 4 of the present law may only be asserted if they have already been established by contract or final judgment.

Arrears that do not exceed twice the amount of the annual pension can be transferred to Rentenbank, provided both parties agree, in accordance with the more detailed provisions of the Rentenbank Act.

§. If, prior to the promulgation of the present law, the process in a matter of dispute has been confirmed or the redemption or settlement with regard to all or individual rights (sections I to III) has progressed to such an extent that the settlement has already been established by contract, legally binding judgment, acknowledgement of the plan of transfer or otherwise legally binding, no objection can be derived from the present law.

However, the provisions of this Act shall apply to all relationships that have not yet been legally established.

If, however, a land division plan has already been implemented in such a redemption or settlement, even if it has not yet been legally established, it can no longer be contested on the basis of the present law, but the settlement can only be effected in the form of an annuity to be treated in accordance with the provisions of the *Gemeinschaftstheilungs-Ordnung*.

§. 101. The provisions of Section 95 shall apply to all pending settlements and redemptions.

§. 102. The provisions of section 47 shall apply to all pending redemptions of change of ownership levies in which the settlement has not yet been legally determined. (§. 100.)

§. 103. The claim to the higher compensation than the normal compensation to be granted according to the declaration of May 29, 1816 (Law Collections 1816. p. 154.) shall cease to exist if this higher

compensation has not already been determined by contract, legally binding judgment, recognition of the settlement plan or otherwise legally binding at the time of promulgation of the present law. In this case, both the entitled party and the obligated party shall only be entitled to the established standard compensation.

The claim for less than the normal compensation shall be settled in accordance with the provisions of the previous laws; however, Article 68 of the Declaration of May 29, 1816 shall not apply in this case either.

§. 104. If the interested parties do not agree on the date for the settlement, the settlement authority shall set such date.

§. 105. For the arbitration proceedings ordered in this Act §§. 11. 14. 17. 30. 31. 44. 63. 72. 83. 85. 88. the §§. 32. ff. of the Ordinance of June 30, 1834. concerning the conduct of business in matters of communal settlements etc. apply. (Law Gazette 1834. p. 96.) shall apply.

§. 106. Half of the costs of settlements and redemptions, excluding legal costs, shall be borne by the entitled parties and half by the obligated parties.

Several entitled persons or several obligors shall contribute to the costs relating to them in proportion to the value of the redeemed real liabilities and consideration.

§. 107. The costs in pending disputes and proceedings concerning entitlements, duties and benefits which cease to exist free of charge as a result of the provisions of the present Act shall be set aside insofar as they have not already been paid.

§. 108. The general commissions and agricultural government departments are authorized to commission any state or municipal official whom they deem suitable to deal with individual matters pertaining to the dispute procedure, and even with the complete handling of simple disputes. They are authorized to commission any state or municipal official whom they deem suitable for this purpose. These officials shall be obliged to submit to such assignments within their official district and shall have the same rights and obligations in respect of these transactions as the permanent commissioners of the dispute authorities. The proceedings taken by them within the limits of their commission shall have the force which is attached to the minutes of the special commissioners in §. 55. of the ordinance of June 20, 1817.

The execution of the settlement of the dispute may take place with the same effect as before a judicial official qualified as a judge or before a notary, also before any state or municipal official entrusted with this business by the General Commission or the agricultural government department. The restrictive provision of §. 43. of the ordinance of June 30, 1834. is repealed.

§. 109. The legitimization of every interested party in a settlement transaction, title to which has not yet been corrected in the mortgage book, shall be deemed to have been established:

a) if he is certified by the municipal authority concerned to be the owner of the land in question, or if he is able to produce a public deed of acquisition of ownership;

b) if the other participants in the transaction do not dispute their legitimacy, and

c) after the public announcement of the settlement has been made (Implementing Act of June 7, 1821. §. 12., Ordinance of June 30, 1834. §. 25.) and notification has been given to any property owners evident from the mortgage book, no other person has filed claims for possession with the special commissioner or the settlement authority until the execution of the proceedings.

Anyone who reports and legitimizes himself as the owner after the expiry of the date stated in the public announcement until the execution of the judgment must accept everything that has been established against him up to the time of his report with the owner of the property provisionally legitimized in accordance with a. and b. above.

The mortgage judge may not refuse to enter the recourse confirmed by the settlement authorities in the mortgage register, even if the recourse has been concluded with an owner other than the registered owner, but the settlement authority has certified at the time of confirmation that the legitimization of the owners not yet titled has been supplemented in the above manner.

§. 110. The special announcement of capital settlements to registered creditors and other real rights holders shall no longer apply:

a) to the extent that the capital settlements are required to cover the set-up costs;

b) in the case of other uses in the substance of the entitled property above the rejection of priority registered capital items, irrespective of the amount of the registered debts or capital settlements.

Whether and to what extent the use has been made in a manner that safeguards the creditors and real rights holders of the entitled property shall be examined by the liquidation authority alone, at its discretion;

c) if the capital settlement is only twenty thalers or less;

d) for monetary compensation for the latest fertilization status and for improvement work;

e) on account of those capital settlements which, pursuant to the law on the establishment of pension banks, are to be paid to the beneficiary

aa) from the obligated parties for pensions or pension shares of less than one silver groschen;

bb) must be paid by Rentenbank for the amounts in excess of the nominal value of the bonds issued (capital fractions).

The settlement monies mentioned under c. d. e. are freely available to the entitled person if he is also the registered owner in the mortgage book, and in particular their use in the fief, entailed estate, hereditary interest property etc. is not to be controlled.

The provisions of the law of June 29, 1835. §. 9. - of the redemption order of July 13, 1829. §. 103. - of the redemption order of June 18, 1840. §§. 100. 101 - of the redemption law of July 4, 1840. §§. 74. 75. and of the communal division order of June 7, 1821. §. 152. are repealed.

§. 111. Any notice regarding capital settlement shall be addressed only to those creditors and real rights holders who are registered in the mortgage register of the entitled property. It is not necessary to determine and notify their non-registered heirs, assigns or legal successors, but this is replaced by the public announcement which must be made if the registered creditor is dead or his whereabouts are unknown or he is no longer the owner of the claim. If, in such cases, it is possible to identify and specifically notify the

current owner of the claim without difficulty, the settlement authority is free to take this route instead of public notification.

§. 112. In addition to the amending provisions of sections 106 to 111, the other existing statutory provisions governing costs and procedure, as well as the rights of third parties, and the relevant provisions of the previous laws referred to in section 1 above shall remain in force insofar as they are not expressly amended by this Act and the Act of today on the establishment of pension banks.

§. 113. From the date of promulgation of the present Act, the Act of October 9, 1848 shall cease to apply.,

concerning the suspension of negotiations on the regulation of landlord and peasant relations and on the redemption of services, natural and monetary dues, as well as the lawsuits pending on these matters (Law 1848. p. 276.),

in respect of all those negotiations and proceedings which have as their object legal relationships which are to be regulated in accordance with the present law.

The more detailed provisions on mill levies and the application of the present law to the same shall be reserved to a special law.

For the time being, the suspension of the redemption negotiations and processes concerning the mill levies remains in place.

§. 114. The execution of the present law in the administrative district of Stralsund shall be entrusted to the General Commission at Stargard. The same statutory provisions shall apply in relation to the procedure, the costs and the rights of third parties as are in force in the previous district of the said authority.

Authenticated under Our Supreme Signature and the Royal Seal.

Given Charlottenburg, March 2, 1850.

(L. S.) Friedrich Wilhelm.

Gr. v. Brandenburg. v. Ladenberg. v. Manteuffel. v. d. Heydt.

v. Rabe. Simons. v. Schleinitz. v. Stockhausen.

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## **25. Act concerning the facilitated sale of small plots of land. From March 3, 1850.**

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree, with the consent of both chambers, the following for the entire extent of the monarchy, with the exception of the parts of the country situated on the left bank of the Rhine:

§. 1. Every landowner, as well as every feudal and entailed estate owner, is authorized to sell individual parcels of land against the imposition of fixed monetary charges redeemable in accordance with the provisions of the redemption order or against the determination of a purchase price, even without the consent of the feudal and entailed estate holders, mortgagees and real estate creditors, provided that in the case of landed estates the credit directorate, and in the case of other estates the settlement authority, certifies that the sale is harmless to the intended interested parties.

§. 2. Such a certificate of harmlessness may only be issued if the separable is of small value and size in relation to the main property, and if the monetary charge imposed or the agreed purchase money equals the proceeds or the value of the separable.

§. 3. The separate property sold shall cease to be part of the real estate of the principal estate to which it has belonged up to that time, and the monetary charge imposed on it, as well as the agreed purchase money, shall take the place of the separate property in relation to the feudal and entailed lienors, mortgagees and real creditors of the principal estate.

§. 4. The statutory provisions on the use of redemption capital shall apply with regard to the use of the fixed purchase monies in the main estate.

§. 5. All provisions that conflict with the provisions of the present Act or cannot be reconciled with it shall be repealed.

Authenticated under Our Royal Signature and Royal Seal.



Given Charlottenburg, March 3, 1850.

(L. S.). Friedrich Wilhelm.

Gr. v. Brandenburg. v. Ladenberg. v. Manteuffel. v. d.  
Heydt.

v. Rabe. Simons. v. Schleinitz. v. Stockhausen.

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## **26. Act concerning the encumbrances in rem on mill properties. From March 11, 1850.**

We Frederick William, by the Grace of God, King of Prussia etc. etc.  
decree the following for the whole extent of the monarchy, with the  
exception of the parts of the country situated on the left bank of the Rhine,  
with the consent of both chambers:

§. 1. In assessing the question of whether or not the taxes on a mill  
property have been abolished by the provisions of §. 30. of the Edict of  
November 2, 1810 (Collection of Laws 1810. p. 86.) or §. 3. of the General  
Trade Regulations of January 17, 1845,

the provisions of §§. 1. and 2 of the ordinance of February 19, 1832  
(Collection of Laws 1832. p. 64.) will no longer apply and only the general  
principles concerning the presentation of evidence and the burden of proof  
will apply.

§. 2. Any lawsuit in which the question referred to in §. 1. is or becomes  
disputed shall have the effect that all redeemable encumbrances in rem  
resting on the property which are not to be regarded as having been revoked  
must be redeemed immediately in accordance with the principles of the Act  
on the Redemption of Encumbrances in Rem etc. of the 2nd of this month.

In respect of all such proceedings, whether they are already pending or  
will be instituted in the future, the competence of the Disputes Settlement  
Authority shall apply.

§. 3. If the disputes arising as to whether and to what extent a levy on a  
mill property is a land tax or must be paid for the operation of the mill trade

cannot be settled amicably during the settlement, the settlement authority shall submit the files ready for decision together with its expert opinion to the Review Board for State Cultural Affairs for a decision. There shall be neither an ordinary nor an extraordinary appeal against the decision of the same.

All pending lawsuits that have not yet been finally decided shall, if an appeal is lodged against the decision that has already been issued, also go to the Revision College for a final decision on the basis of the present law.

Only proceedings pending in the appeal or nullity instance at the time of promulgation of this Act shall be settled by decision of the High Tribunal.

§. 4. All claims for exemption from levies on mill properties which are based thereon:

that the duties had been abolished by the provisions of §. 30. of the Edict of November 2, 1810. or §. 3. of the General Trade Regulations,

must be registered by the obligor with the competent settlement authority before January 1, 1855, if they are lost.

§. 5. In all cases in which compensation can be claimed from the state treasury for the loss of a levy paid for a commercial enterprise in accordance with the Compensation Act for the General Commercial Code of January 17, 1845, the government concerned shall be notified of the application to initiate proceedings. In such a case, it is left to the government to appoint a lawyer to represent the fiscal interest, who must be consulted in all negotiations.

§. 6. In the case of each redemption of the real rights attached to a mill property, the owner thereof shall be entitled to demand that one third of the net proceeds of the property remain with him, and that, to the extent necessary for this purpose, the compensation for the real charges to be redeemed be reduced. If the obligated mill owner is opposed by several entitled persons who must accept a reduction in their compensation, the reduction shall be in proportion to the size of the compensation.

The net yield of the mill property is determined as follows:

The present common purchase value, i.e. the value of the mill property together with all accessories, according to its water power, location, the

competition existing at the time of valuation and other determining circumstances, taking into account all burdens and charges resting on it and all rights to which it is entitled, shall be determined by arbitrators.

The compensation which has been granted or is still to be granted to the present or a former owner of the mill property for the abolition of any compulsory rights or rights of ban or exclusive trade licenses connected therewith shall be included in the value.

Then four percent of the purchase value determined in this way and the compensation shall be added to the annual value of all redeemable real encumbrances of the mill property after deduction of the consideration to be taken into account in accordance with §§. 59. and 60 of the Act on the Redemption of Real Encumbrances of 2 March.

The sum of these represents the net income from the property.

§. 7. Ship mills are also to be counted as mill properties for the purposes of this Act.

§. 8. This provision shall not apply to mills that were newly established after the promulgation of the Industrial Code of January 17, 1845, due to the reduction of the compensation for the real charges to be redeemed to the amount of two thirds of the net income of the mill property.

§. 9. On the day of the promulgation of the present law, the suspension of the proceedings on mill levies ordered in §. 1. Litt. b. and §. 2. No. 1. of the law of October 9, 1848 (Gesetz-Sammlung 1848. p. 276.) shall cease.

The interim determinations on current benefits made pursuant to §. 2. no. 1 of the said Act shall remain in force until the redemption has been carried out, as shall the power of the settlement authorities to make such determinations in the future.

Authenticated under Our Royal Signature and Royal Seal.

Given Charlottenburg, March 11, 1850.

(S. L.) Friedrich Wilhelm.

Gr. v. Brandenburg. v. Ladenberg. v. Manteuffel. v. d. Heydt.

v. Rabe. Simone. v. Schleinitz. v. Stockhausen.

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## **27. Hunting police. Law. From March 7, 1850.**

The Hunting Act of October 31, 1848., which gave every landowner free hunting rights, had caused terrible devastation among the game and ultimately held out the prospect of complete extermination. In addition, other evils had been highlighted as consequences of this law, such as poaching, shooting with rifles, and so on. In view of these evils, this law came into being, which substantially restricts the right to hunt in that it may only be exercised on an area of a certain size and by certain persons.

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree, with the consent of both Houses, as follows:

§. 1. The exercise of the hunting rights to which every landowner is entitled on his land is subject to the following provisions.

§. 2. to exercise hunting rights on his own land, the owner is only authorized to do so:

a) on such properties which, in one or more adjoining municipal districts, occupy an area used for agriculture or forestry of at least three hundred acres and are not interrupted in their connection by any third-party property; the separation formed by paths or waters shall not be regarded as an interruption of the connection;

b) on all permanently and completely enclosed properties. The district president shall decide what is to be considered permanently and completely enclosed.

c) on lakes, on ponds set up for fishing and on such islands which constitute a property.

§. 3. If the land described in §. 2. is owned jointly by more than three owners, not all co-owners are permitted to exercise their own hunting rights on this land.

Rather, they must transfer the exercise of the hunting right to one to a maximum of three of them. However, they are also free to suspend the right to hunt or to have it exercised by an employed hunter or to lease it out.

Municipalities or corporations may only exercise hunting rights on such land belonging to them (§. 2.) by lease or through an employed hunter.

§. 4. All other properties of a municipal district which do not belong to those mentioned in §. 2. shall, as a rule, form a common hunting district. However, the municipal authorities shall be permitted to combine several entire municipal districts or individual parts of a municipal district with another municipal district into a common hunting district by free agreement. The municipal authority shall also be authorized, with the approval of the supervisory authority, to form several separate hunting districts from the district of one municipality, each of which, however, may cover an area of less than three hundred acres.

The owners of the properties specified in §. 2. are permitted to join the hunting district of their municipalities with these properties.

The resolutions on all such amendments to the ordinary hunting districts may not extend for a period of more than three years or for a period of more than twelve years.

§. 5. The owners of isolated farms are entitled to exclude themselves from the common hunting district with those plots of land which surround the farm in whole or in part, i.e. which do not lie in a compound with other plots of land, even if the plots of land do not belong to those mentioned in §. 2.

§. 6. On the properties excluded from the common hunting district in accordance with §. 5, the landowners must completely suspend the exercise of hunting rights for as long as the exclusion lasts.

The boundaries of such properties must also always be clearly marked.

§. 7. Land which is wholly or largely enclosed by a forest of more than three thousand acres, which forms a single property, shall not be included in the communal hunting district of the municipality, even if it does not fall under the provisions of §. 2. The owners of such properties shall be obliged to transfer the exercise of hunting on the same to the owner of the forest surrounding them at the latter's request in return for compensation to be

calculated according to the hunting yield, or to suspend the exercise of hunting altogether.

In the absence of an agreement, the compensation shall be determined by the district president, subject to the right of both parties to appeal to a court decision.

If the owner of the forest does not exercise his right to hunt on the enclave at the offer of the owner, the latter shall be entitled to hunt on the enclaved land.

If several such properties adjoin each other so that they cover an uninterrupted contiguous area of at least three hundred acres, they shall form a separate common hunting district to which the same provisions shall apply as to ordinary hunting districts.

§. 8. The regulations contained in §. 5. of the law of October 31, 1848 (Collection of Laws for 1848. p. 344.) concerning the exercise of hunting in the fortifications, in their perimeters, as well as in the powder magazines and similar establishments shall remain in force unchanged.

§. 9. The owners of the properties forming a hunting district shall be represented by the municipal authority in all hunting matters. If properties from different municipal districts are combined into one hunting district, the supervisory authority shall determine the municipal authority which is to assume representation.

§. 10. In accordance with the decisions of the municipal authority, either:

- a) suspend the practice of hunting altogether, or
- b) the hunt is shot for the account of the landowners concerned by an employed hunter, or
- c) the same is leased out, whether publicly by way of a public offer or freely.

The leases may not extend for a period shorter than three years or longer than twelve years.

§. 11. The rent and income from hunting by an employed hunter shall be paid into the municipal treasury and, after deduction of any administrative costs incurred, shall be distributed by the municipal authority among the owners of those properties on which the communal exercise of hunting rights takes place, in proportion to the area of these properties.

§. 12. The lease of hunting both on the properties mentioned in Section 2 and on communal hunting districts may never be granted jointly to more than a maximum of three persons under penalty of nullity of the contract.

Foreigners may only be accepted as hunting tenants with the approval of the supervisory authority.

Subsequent leases are not permitted without the consent of the lessor.

§. 13. Both the tenants of communal hunting districts and the owners of the land described in Section 2 are permitted to employ hunters for their hunting grounds.

§. 14. Anyone wishing to hunt must obtain a hunting license valid for the entire state, valid for one year and personal, from the district administrator of the district in which he resides, and must always carry it with him when hunting.

Such a hunting license may also be issued to foreigners by the district administrator of the guarantor's place of residence, but only against the surety of a resident. As a result of his application, the guarantor shall be liable for penalties imposed on the foreigner on the basis of §§. 16, 17 and 19, as well as for the costs of the investigation.

For each hunting license, a levy of one thaler is paid annually to the district municipal treasury of the holder's place of residence. The amounts received are used in accordance with the resolutions of the district council.

Hunting licenses are issued free of charge and stamped.

Forestry and hunting officials employed in the royal or municipal service as well as private forestry and hunting servants employed for life shall receive the hunting license free of charge, insofar as it concerns the exercise of hunting in their shooting districts. Hunting licenses that are issued free of charge must state this and for which shooting district they are valid.

§. 15. The following persons must be refused a hunting license:

a) those who are likely to handle the firearm carelessly or endanger public safety;

b) those who have been deprived of the right to bear arms by a judgment, as well as those who are under police supervision or who have been deprived of the national cockade.

In addition, those who have been punished for a forestry or hunting offense or for misuse of a firearm may be denied a hunting license, but only within five years of serving their sentence.

§. 16. Failure to comply with the above provisions on the release of hunting licenses is punished as follows:

Anyone who hunts without a hunting license is liable to a fine of five to twenty thalers for each offence.

Anyone who does not have their hunting license with them when hunting is liable to a fine of up to five thalers.

Anyone who attempts to legitimize himself with a foreign hunting license not issued in his name in order to evade the forfeited penalty shall be fined five to fifty thalers.

§. 17. Anyone who, although provided with a hunting license, hunts on another's hunting ground without being accompanied by the person entitled to hunt or without having the latter's written permission with him, shall be liable to a fine of two to five thalers.

Anyone who is obliged to refrain from hunting on his property altogether, but nevertheless practices the same on it, has forfeited a fine of ten to twenty thalers and the confiscation of the hunting equipment used.

Anyone who hunts on his own property on which hunting is leased to a third party, or on which a hunter has to hunt for the joint account of the landowners involved in a hunting district, without the consent of the hunting tenant or the municipal authority, as well as anyone who hunts on other people's property without being authorized to do so, shall be punished for game theft or hunting contravention in accordance with the general laws.



§. 18. The hunting and closed season shall be determined in accordance with the laws in force at the time of the promulgation of the Act of October 31, 1848.

The ordinance of December 9, 1842. §§. 1. and 2. (Law Collection 1843. p. 2.) and the publication of March 7, 1843. (Law Collection 1843. p. 92.) shall enter into force again. Other violations of the regulations on hunting and closed seasons shall be punished with a fine of up to fifty thalers to be determined at the discretion of the court.

§. 19. Anyone who uses his relatives, servants, apprentices or day labourers as participants or assistants to commit a hunting police offense shall be liable, if they are unable to pay, for the fines and damages to be paid by them in addition to the penalty imposed by himself.

§. 20. No further investigation shall be initiated into a hunting police offense if three months have elapsed between the time the offense was committed and the receipt of the report to the public prosecutor's office or the judge.

§. 21. Anyone may deter game from his property by means of rattles, erected scarecrows and fences, even if he is not authorized to exercise the right to hunt on such property. He may also use small or common domestic dogs to ward off red deer, fallow deer and wild boar.

§. 22. In communal hunting districts where game damage occurs, the municipal authority may not suspend hunting if even a single landowner objects.

§. 23. If the properties located in the vicinity of forests, which form parts of a common hunting district, or such forest enclaves on which the exercise of hunting is left to the owner of the forest surrounding them (Section 7.), are exposed to considerable game damage by the game crossing from the forest, the district president is authorized, at the request of the damaged landowners, after prior examination of the need and for the duration of the same, to request the hunting tenant himself to shoot the game during the closed season. If, despite this request, the tenant hunter does not sufficiently protect the damaged land, the district president may authorize the landowners themselves to catch the game crossing onto this land in any permitted manner, in particular to kill it with a rifle.

The same applies with regard to the owners of such properties on which rabbits multiply to an extent that is detrimental to the cultivation of fields and gardens. If an appeal is lodged with the superior administrative authority against the order of the district administrator, the former shall remain valid on an interim basis until a higher decision is received.

The game shot or caught by the landowners as a result of such authorization by the district administrator must, however, be surrendered to the hunting tenant against payment of the usual shooting fee in the area and the report of the case must be made within four and twenty hours.

§. 24. The owner of such a forest enclave, on which hunting may not be practiced at all according to §. 7, is also entitled, if the property is exposed to considerable game damage and the owner of the surrounding forest hunting ground does not sufficiently comply with the request of the district administrator to shoot the game present himself during the closed season, If the owner of the surrounding forest hunting ground does not sufficiently comply with the district administrator's request to shoot the game present even during the closed season, he is entitled to demand that the district administrator, after prior examination of the need and for the duration of the same, grant him permission to catch the game crossing onto the enclave in any permitted manner, namely also to kill it with the use of a shooting rifle.

In this case, the game caught or shot remains the property of the enclave owner.

In the cases mentioned in §§. 23. and 24, the authorization to be issued by the district administrator takes the place of the hunting license.

§. 25. There is no legal claim to compensation for damage caused by game.

Hunting landlords, on the other hand, are free to make precautionary provisions regarding game damage in the hunting lease contracts.

§. 26. If the existing hunting lease contracts are an obstacle to the formation of the common hunting districts prescribed in §§. 4. and 7, they shall automatically expire on July 1, 1851.

§. 27. In those towns which do not belong to a rural district, the powers conferred on the rural councils by this law shall be exercised by the local

police authorities, and the municipal treasury shall take the place of the district municipal treasury.

§. 28. Anyone wishing to hunt within the 1300 paces of the demarcated fortress rayon must first have his hunting license specially endorsed by the fortress commander.

Violation of this regulation is punishable by a fine of two to five thalers.

§. 29. The fines threatened in §§. 16, 17, 18 and 28 shall be replaced by a proportionate prison sentence if the offender is unable to pay them.

§. 30. All provisions contrary to this Act are hereby repealed.

§. 31. Our Minister for Agricultural Affairs is charged with the implementation of this Act.

Authenticated under Our Supreme Signature and the Royal Seal.

Given Charlottenburg, March 7, 1850.

(L. S.) Friedrich Wilhelm

Gr. v. Brandenburg. v. Ladenberg. v. Manteuffel. v. d. Heydt.

v. Mabe. Simons. v. Schleinitz. v. Stockhausen.

**28. Act concerning the repeal of the Circular Decree of  
February 26, 1799. on the punishment of theft and similar  
crimes and the amendment of the penalties for infractions. Of  
March 11, 1850.\*)**

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree, with the consent of both chambers, the following for those parts of the country in which the General Land Law and the General Court Regulations are in force:

§. 1. The circular decree of February 26, 1799. concerning the punishment of thefts and similar crimes is hereby repealed. Until the

publication of the new penal law, only the provisions of Title 20 of the General Land Law shall apply to these crimes, together with the other provisions issued in relation to the same.

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\*) The ordinance published on December 18, 1848., already contains most of the provisions of this law. It has been revised by the chambers in this Act and has received significant changes in §. 6. and 3, etc. According to §. 3, in particular, the penalty for slight bodily harm now also consists of a fine.

§. 2. A simple defamation of honour committed by speech, writing, signs, pictures or other representations shall be punished at the discretion of the court, which shall be determined by the circumstances of the case, with a fine of up to three hundred thalers or with imprisonment or detention for up to six months.

§. 3. Lesser real offenses (§. 628, Title 20, Part I of the General Land Law) are punished as severely as simple insult by speech or writing. This same punishment is imposed for slight intentional bodily harm (§. 796. Title 20. Part II. General Land Law) in place of the previously prescribed punishment.

§. 4. The distinction made in the existing laws as to the punishment of injuries and slight bodily harm shall be irrelevant.

§All insults, with the exception of insults committed against public officials in the exercise of their office or in relation to the same and serious real insults, may only be prosecuted by the insulted party by way of civil proceedings, unless special laws provide otherwise for individual types of such insults. However, in all cases in which this appears necessary in the interests of public order, the public prosecutor is authorized to demand that the offending party be punished by way of investigative proceedings as long as a judgment has not yet been rendered in any civil proceedings that may have been instituted. If the judicial investigation is opened in response to such an action brought by the public prosecutor's office, the waiver of punishment of the insulter has no influence on the progress of the investigation and the execution of the judgment. If the public prosecutor's office intervenes, any civil proceedings already instituted by the insulter are deemed to be settled by the opening of the investigation.

§. 6. The existing statutory provisions on the procedure for taking evidence, in particular also on which persons may be examined and sworn as witnesses, and on the fact that the oath is not to be regarded as admissible evidence in matters of insult, shall remain applicable to civil proceedings for insults. On the other hand, the previous positive rules on the effects of evidence shall cease to apply. From now on, the judge who has jurisdiction must decide whether the defendant is guilty or not guilty after examining all the evidence for the prosecution and defence according to his free conviction based on the totality of the proceedings. However, he is obliged to state in the judgment the reasons which led him to do so. A provisional acquittal shall no longer be recognized.

The person declared guilty shall be sentenced to the full statutory penalty.

§. 7. Both parties shall be entitled to the remedies of restitution, appeal and appeal for annulment prescribed for civil proceedings, but not the right of appeal on points of law, against any judgment given in civil proceedings on the grounds of insult.

With regard to complaints concerning only the costs, the provision of No. 3. Article 1. of the Declaration of April 6, 1839. (Law Collection 1839. p. 126.) shall apply.

§. 8. In the appeal instance, the appellant may challenge the correctness of the facts accepted as established by the first instance judge only by stating new facts or new evidence, and the appeal judge must assess in his decision whether and to what extent these new facts or evidence change the decision of the first instance judge with regard to the facts or the offense.

If no new facts or evidence are presented, the second judge shall only decide whether the facts established by the first judge constitute the defamation assumed by the latter, as well as the degree of punishment.

§. 9. The costs of an unsuccessfully lodged appeal shall be borne by the party who lodged the appeal. All other costs of the proceedings shall be borne by the defendant if the defendant is ultimately sentenced to a penalty, and by the plaintiff if the defendant is ultimately acquitted of the charge.

§. 10. All provisions contrary to this Ordinance are hereby repealed.

§. 11. The present law shall replace the ordinance of December 18, 1848 (Law Collection, page 423), the provisions of which shall remain in force everywhere until the present law becomes binding. All cases pending at the time of the entry into force of this Act shall be brought to a conclusion in accordance with the provisions of the Ordinance of December 18, 1848., through all admissible instances.

Authenticated under Our Supreme Signature and the Royal Seal.

Given Charlottenburg, March 11, 1850.

(L. S.) Friedrich Wilhelm.

Gr. v. Brandenburg. v. Ladenberg. v. Manteuffel. v. d. Heydt,

v. Rabe. Simons. v. Schleinitz. v. Stockhausen.

## **29. Act concerning the determination of the state budget for the year 1849 of March 11, 1850.**

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree, with the consent of both Houses, as follows:

§. 1. The state budget for the year 1849, published in the 1848 Collection of Laws, is estimated at 94,174,380 Rthlr. in revenue as a result of the revision effected by the Chambers,

four and ninety million four and seventy thousand three hundred and eighty thalers,

and in expenditure to 94,148,790 Rthlr,

four and ninety million one hundred eight and forty thousand seven hundred and ninety thalers,

finally established.

§. 2. The Minister of Finance shall be responsible for implementing this Act.

Authenticated under Our Supreme Signature and the Royal Seal.

Given Charlottenburg, March 11, 1850.

(L. S.) Friedrich Wilhelm.

Gr. v. Brandenburg. v. Ladenberg. v. Manteuffel. v. d.  
Heydt.

v. Rabe. Simons. v. Schleinitz. v. Stockhausen.

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### **30. Act concerning the adoption of the state budget for the year 1850 of March 11, 1850 \*)**

We Frederick William, by the Grace of God, King of Prussia etc. etc.  
decree, with the consent of both Houses, as follows:

§. 1. The state budget for the year 1850 is approved in revenue at  
91,338,449 Rthlr,

one and ninety million three hundred eight and thirty thousand four  
hundred eight and forty thalers,

and in expenditure to 90,974,393 Rthlr.

ninety million nine hundred four and seventy thousand three hundred  
three and ninety thalers

in continuing, and 4,925,213 Rthlr,

four million nine hundred five and twenty thousand two hundred and  
thirteen thalers

in extraordinary expenses.

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\*) Here is the specific budget in its individual items.

§. 2. The Minister of Finance shall be responsible for implementing this Act.

Authenticated under Our Supreme Signature and the Royal Seal.

Given Charlottenburg, March 11, 1850.

(L. S.) Friedrich Wilhelm.

Gr. v. Brandenburg. v. Ladenberg. b. Manteuffel. v. d. Heydt.

v. Rabe. Simons. v. Schleinitz. v. Stockhausen.

### **31. Act concerning the obligation of the municipalities to compensate for damage caused by public run-ins. From March 11, 1850.**

During the tumultuous events of 1848., many private individuals had suffered damage without being able to obtain compensation. Neither the treasury nor the municipalities considered themselves obliged to do so, and the actual guilty parties could almost never be identified. The following law was brought about by the many lawsuits and recourse claims filed in this regard, the purpose of which is obviously also to instil in all wealthy citizens of a place a substantial interest in quelling a riot as soon as it occurs. At the same time, however, this obligation of the municipalities must also provide them with the means to suppress riots, and the relevant provisions of the law arise from this consideration.

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree, with the consent of both Houses, as follows:

§. 1. If, in the course of a riot or a gathering of people, damage to property or displacement of persons takes place by open violence or by the application of the legal measures taken against it, the municipality in whose district these acts took place shall be liable for the damage caused thereby.

The liability established in §. 1. shall not apply if the damage was caused by a crowd of people entering the municipal district from outside and



in this case the inhabitants of the latter were demonstrably unable to prevent the damage.

§. 3. In the case of §. 2, the obligation to pay compensation lies with the municipality or municipalities on whose territory the assembly took place or from whose district the attack took place, unless it can be proven that these municipalities were also unable to prevent the damage caused.

Several municipalities obliged under the above provisions (§§. 1. and 3) shall be jointly and severally liable to the injured party.

§. 4. If damage of the kind referred to in §. 1. has taken place in a municipality, the board of the municipality shall be entitled and, at the request of the injured party, obliged to make a preliminary determination and assessment of the damage caused.

Interested parties shall be consulted as far as possible in this determination.

§. 5. Any person wishing to claim damages from the municipality must register his claim with the municipal board within 14 days of the date on which the existence of the damage is established and, if necessary, take legal action within 4 weeks of the date on which he receives notification from the municipal board.

§. 6. The foregoing provisions shall not alter the obligation to indemnify those persons who are obliged to do so under the special laws. The municipality which has fulfilled its obligation to indemnify shall be entitled to recourse against those liable for the damage in accordance with general principles.

§. 7. Until the enactment of a general law on a municipal, civil or shoe militia, the district governments shall be authorized to order the establishment of an armed security association at the request of the municipalities.

Authenticated under Our Supreme Signature and the Royal Seal.

Given Charlottenburg, March 11, 1850.

(L. S.) Friedrich Wilhelm.

Gr. v. Brandenburg. v. Ladenberg. b. Manteuffel. v. d. Heydt.

v. Rabe. Simons. v. Schleinitz. v. Stockhausen.

### **32. municipal ordinance for the Prussian state. From March 11, 1850 \*)**

The constitutional form of government has necessitated a completely new municipal and district constitution for the Prussian state, since the previous institutions of this kind cannot be harmonized everywhere with the new forms of administration. The new municipal order brings about powerful changes, especially in that all localities of the state must be united into larger municipalities, and that in addition to the provincial state authorities, representatives of the provincial inhabitants are established everywhere, so that the principle of self-government becomes predominant. A special instruction has already been issued by the Minister of the Interior for the introduction of the municipal order, and this new important law will certainly give rise to a special literature very soon, once it has been introduced in practice.

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\*) This law substantially changes the known city ordinances of the Prussian state. State are substantially changed.

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree, with the consent of both Houses, the following:

#### **Title I. - On the foundations of the municipal constitution**

§. 1. A municipal district (district, field, ban) includes all properties located within its boundaries.

Each property must belong to or form a municipal district.

Changes in municipal districts may only be effected by a resolution of the district council with the consent of the representatives of the municipalities concerned and after consultation with the district council.

This resolution shall require the approval of the King in order to be valid and shall enter into force after it has been published in the Official Gazette.

Changes of municipal districts which occur on the occasion of the division of municipalities shall not be subject to these provisions.

§. 2. All inhabitants of the municipal district belong to the municipality.

Residents are considered to be those who are domiciled in the municipal district in accordance with the provisions of the law.

§. 3. All residents (§. 2.) of the municipality are entitled to share the use of public municipal facilities and are obliged to participate in municipal services in accordance with the provisions of this law.

The provisions of special foundations associated with such municipal institutions, as well as the private rights relating thereto based on special titles, shall not be affected thereby.

Anyone who owns land in the municipality or runs a standing business but does not live in the municipality is only obliged to share in those charges that are imposed on the land or business or on the income flowing from those sources.

The extent to which woodlands may be used to pay municipal taxes and charges shall be determined according to the special relationship of the former to the municipalities. The Provincial Assembly shall make more detailed provisions in this regard, which shall require the approval of the King.

Until such provisions are enacted, forest owners may be required to pay municipal taxes and charges to a greater extent than hitherto against their will only to the extent deemed appropriate by the District Council in agreement with the President of the Government. In the Province of Westphalia and in the Rhine Province, the previous rights and obligations of the state as forest owner shall remain in force until such provisions are enacted.

The properties referred to in §. 7, §. 8. and §. 9. of the law of January 21, 1839 (Collection of Laws p. 31. and 32.) which are incapable of yield or intended for a public service or use shall be exempt from municipal obligations throughout the state to the extent that they already possessed this exemption at the time of the promulgation of this municipal ordinance.

Temporary exemptions from municipal charges and services for newly built properties are permitted.

All other, non-personal exemptions can be redeemed by the municipalities and cease once the compensation has been determined and paid.

Anyone wishing to claim compensation must register this claim with the municipal council of the municipality concerned (§. 156.) within one year of the introduction of these municipal regulations, failing which the exemption and the claim to compensation shall lapse. The compensation shall be paid at 20 times the annual value of the exemption according to the average of the last 10 years prior to the promulgation of these municipal regulations. If a different scale of compensation is determined by special legal title, this shall be the end of the matter. The amount of compensation shall be determined by arbitrators, to the exclusion of ordinary legal remedies; one of these shall be appointed by the owner of the previously exempted property, the other by the municipal council. The chairman shall be appointed by the supervisory authority if the arbitrators are unable to agree on his appointment.

All personal exemptions are revoked without compensation.

§. 4. Every self-employed Prussian is a municipal voter if he has been one year:

- 1) is a resident of the municipal district (§. 2.);
- 2) do not receive poor relief from public funds, and
- 3) has paid the municipal taxes relating to him; finally

4) pays at least two Thaler as an annual amount in direct taxes, or if it is a municipality administered in accordance with the provisions of Title II, owns a plot of land worth 100 Rthlr. or a house in the municipal district.

In the municipalities subject to income tax, the contribution to the direct state tax is replaced by proof that the member of the municipality earns a pure annual income;

for municipalities with less than	10,000	inhabitants	200	Rthlr.
=	=	=	10,000-50,000	= 250 =
=	=	more than	50,000	= 300 =

Tax payments, income and property of the wife are credited to the husband, tax payments, income and property of the minor children or children in paternal custody are credited to the father.

After the age of 25, anyone who has his or her own household is considered to be self-employed, unless the right to dispose of his or her assets or to manage them has been withdrawn by court order.

Only residents of the municipal district who are municipal voters may be elected to the unpaid positions in the municipal administration and to the municipal council.

Those who are not in full possession of civil and civic rights as a result of a final judicial decision are excluded from the right to vote and eligibility for election.

The right to vote and eligibility to stand for election shall be suspended as long as the person entitled to do so is in judicial custody or under criminal investigation or in bankruptcy. Where the Rhenish Civil Code applies, the right to vote and the eligibility to stand for election of a person who becomes insolvent shall be suspended until rehabilitation has been pronounced.

§. 5. Anyone who has paid more than one of the three highest taxed inhabitants in a municipality for one year, both in direct state and municipal taxes, is entitled to take part in the elections, even without residing or staying in the municipality, if the other requirements for being a municipal voter are met.

Legal entities have the same right if they are taxed to such an extent in the municipality.

§. 6. The municipalities are corporations.

Each municipality is entitled to self-administration of its own affairs.

§. 7. A municipal council and a municipal council shall be formed in the municipalities, which shall represent them in accordance with the more

detailed provisions of this Act. The municipal council is the local authority and administers the affairs of the municipality.

The rights and duties associated with the feudal and hereditary Schulzen estates in relation to the administration of the Schulzen office are abolished.

§. 8. Each municipality shall be authorized to record its special constitution in a municipal statute, which shall then form the basis of this special constitution.

The objects of such a statute are:

1) to determine such matters of the municipalities as well as such rights and duties of their members in respect of which the present law permits differences or contains no express provisions

2) Provisions concerning other peculiar conditions and facilities. The municipal statute requires the confirmation of the district council after prior examination by the district committee.

§. 9. As a rule, the provisions of Title II shall apply to municipalities with more than 1500 inhabitants, and the provisions of Title III shall apply to municipalities with no more than 1500 inhabitants.

However, at the request of the municipal council elected in those municipalities in accordance with Title II and in these in accordance with Title III, the district council may also subject municipalities with more than 1500 inhabitants to the provisions of Title III and municipalities with no more than 1500 inhabitants to the provisions of Title II.

## Title II - Municipalities with more than 1500 inhabitants.

### Section 1 - On the assembly and election of the municipal council.

§. 10. The municipal council consists of 12 members (municipal councillors) in municipalities with fewer than 2,500 inhabitants,

from 18 in municipalities with between 2,500 and 5,000 inhabitants,

=	24	=	=	=	5,001	=	10,001	=
=	24	=	=	=	10,001	=	20,001	=
=	24	=	=	=	20,001	=	30,001	=
=	24	=	=	=	30,001	=	50,001	=
=	24	=	=	=	50,001	=	70,001	=
=	24	=	=	=	70,001	=	90,001	=
=	24	=	=	=	90,001	=	120,001	=

In municipalities with more than 120,000 inhabitants, 6 municipal councillors are added for every additional 50,000 inhabitants.

Where the number of members has been different under the previous provisions, it shall remain at this number unless the newly elected municipal council, with the approval of the district council, has decided to reduce or increase it.

§. 11. For the purpose of electing the municipal council, the municipal electors (Sections 4 and 5) shall be divided into three divisions according to the direct taxes they pay (municipal, district, county, provincial and state taxes), and in municipalities where there is a meal and slaughter tax, according to their income.

The first division consists of those who pay the highest amounts up to one third of the total amount of the tax of all municipal electors, or who have the highest income up to one third of the total income of all municipal electors.

The first division also includes those whose tax amount or income only partially falls into the first third. The remaining voters form the second and third divisions; the second division extends to half of the total tax or total income of these voters.

Taxes paid for real estate or business operations in another municipality, as well as the tax for trades carried out while moving around, are not to be taken into account when forming the division.

The services (§. 49.) are charged in the same way as the levies.

No voter may belong to two divisions at the same time.

If it cannot be determined by the amount of tax or income, nor by the alphabetical order of the names, which of several voters is to be included in a particular division, the lot shall decide.

Each division elects one third of the members of the municipal council, without being bound by the voters of the division.

§. 12. If there are more than 500 voters in a division, the election may be held in the same division according to districts. Municipalities consisting of several localities may also be divided into electoral districts. The number and boundaries of the electoral districts, as well as the number of municipal councillors to be elected from each of them, shall be determined by the municipal executive committee in accordance with the number of voters:

§. 13. In the case of municipalities comprising several localities, the district council may determine, in proportion to the number of inhabitants, how many members of the municipal council are to be elected from each individual locality.

§. 14. Half of the municipal councillors to be elected by each division must consist of landowners (proprietors, usufructuaries and those with hereditary rights of ownership). If there are no or only very few landowners in a municipality, tenants may be elected instead of or like them. The district council shall determine the details of this for each individual place.

§. 15. Members of the municipal council cannot be:

1) the members of the supervisory authority appointed by the state (§. 138.);

2) the members of the municipal council and the other municipal officials;

3) the members of the district, municipal and regional courts, including the individual judges of their judicial districts, as well as the members of the higher courts;

4) civil servants of the state bar;

5) the police officers;



6) Persons belonging to the standing army and to the land defence tribes. Father and son, as well as brothers, may not be members of the municipal council at the same time. If such relatives are elected at the same time, the older one alone shall be admitted.

§. 16. The members of the municipal council shall be elected for a term of 6 years. However, each election loses its effect when eligibility ceases (§. 4.). Every two years, one third of the members shall retire and be replaced by new elections. Those retiring for the first and second time are determined by lot for each division.

§. 17. A list of the municipal electors, which proves their required qualifications, shall be kept by the municipal executive committee and corrected annually in July.

The list shall be divided according to the electoral divisions and, in the case of §. 12, according to the electoral districts.

§. 18. From July 1 to 15, the municipal council shall proceed to correct the list.

From July 15 to July 30, the list is published in one or more public places in the municipality. During this period, any resident of the municipality may raise objections to the accuracy of the list with the municipal council.

The municipal council will decide on this by August 15.

Within 10 days of notification of the decision, an appeal may be lodged with the district council, which shall make a final decision within 4 weeks.

If the name of a resident who has once been included in the list is to be deleted again, the municipal executive committee must notify the resident eight days in advance, stating the reasons.

§. 19. Elections for the regular completion of the municipal council shall take place every two years in November. The elections of the third division shall take place first, those of the first last.

Extraordinary elections to replace members who have resigned during the term of office may be arranged by the municipal council or ordered by

the district council. The substitute shall remain in office only until the end of the 6-year term for which the retiring member was elected.

All supplementary or replacement elections shall be held by the same divisions and districts (§. 12.) by which the retiring member was elected. If the number of municipal councillors to be elected cannot be divided by three, then, if only one remains, he shall be elected by the second division. If two remain, the first division elects one and the third division elects the other.

§. 20. The municipal council shall at any time make the necessary determination to supplement the required number of landowners (Section 14). 3 If the number of landowners to be elected cannot be divided by the number of electoral districts, the allocation to the individual electoral districts shall be determined by lot.

With this restriction, retiring members of the municipal council can be re-elected at any time.

§. 21. Fourteen days before the election, the voters on the list (§§. 17., 18.) shall be called to the elections by the municipal council by means of a written invitation or local announcement.

The invitation or announcement must precisely specify the place, the days and the hours in which the votes are to be submitted to the election committee.

§. 22. The election committee in each electoral district shall consist of the mayor or a deputy appointed by the mayor as chairman and two assessors elected by the municipal council. The municipal council shall elect a deputy for each assessor.

§. 23. Each voter must declare orally to the electoral board for the record whom he wishes to vote for. He must designate as many persons as are to be elected.

Only those voters mentioned in §. 5. who live outside the municipality, who are subject to the highest taxation and legal entities, as well as those voters who have been removed from their municipal district due to military service, may exercise their right to vote by proxy. The proxies must themselves be municipal voters.

If the power of attorney is not issued in certified form, the election committee shall make the final decision on its recognition.

§. 24. Those who receive an absolute majority of votes (more than half of the votes) in the first vote are elected.

If the first vote does not result in an absolute majority of votes for as many persons as are to be elected, a second election is held.

The election committee compiles the names of those persons who have received the most votes next to those elected so that twice the number of members still to be elected is reached. This compilation is then deemed to be the list of those eligible for election.

The voters shall be called to the second election eight days in advance by an announcement of the election committee stating the result of the first election. An absolute majority of votes is not required for the second election.

Among those who have received an equal number of votes, the lot is decisive.

Anyone elected in more than one division or district must declare which election he wishes to accept,

§. 25. The election records shall be signed by the election committee and kept by the municipal council. The municipal council shall immediately announce the result of the completed election.

Any voter of the municipality may lodge a complaint with the supervisory authority against the election procedure that has taken place within ten days of the announcement.

In the event of significant irregularities, the supervisory authority shall declare the elections invalid by means of a motivated decision within twenty days of the announcement following a complaint or ex officio.

§. 26. The members of the municipal council newly elected at the time of the regular supplementation shall take up their duties at the beginning of the year following their election; the retiring members shall remain in office until then.

The municipal board shall order the introduction of the elected members and their commitment by shaking hands on oath.

## Section II - On the composition and election of the municipal council.

§. 27. The municipal council shall consist of the mayor, an alderman as his deputy and a number of aldermen (Stadträthen, Rathsherren, Rathmännern), namely in municipalities of

less than	2,500	inhabitants	2	aldermen,	
2,500	to	10,000	=	4	=
10,001	=	30,000	=	6	=
30,001	=	60,000	=	8	=
60,001	=	100,000	=	10	=

In the case of more than 100,000 inhabitants, two aldermen shall be added for each additional 50,000 inhabitants. Where the number of members of the municipal council (magistrate) has been greater in accordance with the previous provisions, the latter number shall remain as long as the municipal council has not decided on a reduction with the approval of the district council.

All municipalities of large size or with a large population shall be divided by the municipal council into local districts after consultation with the municipal council.

Each district shall be headed by a district leader, who shall be elected by the municipal council from the voters of the district for a term of six years and confirmed by the municipal council.

The district councillors are organs of the municipal council and are obliged to comply with its orders, in particular to support it in the local business of the district.

In the localities mentioned in §. 13, the mayor may be represented by a member of the municipal council residing there, who shall be elected by the district council.

§. 28. Members of the municipal board cannot be:

- 1) the members of the supervisory authority;
- 2) the members of the municipal council, likewise municipal sub-officials including the municipal collector;
- 3) Clergymen and teachers at public schools;
- 4) the members of the judiciary and the officials of the public prosecutor's office;
- 5) the police officers;
- 6) the persons belonging to the standing army and the land defence tribes.

Father and son, father-in-law and son-in-law, brothers and brothers-in-law may not be members of the municipal council at the same time.

If the in-lawship arises during the term of office, the member who caused the impediment shall resign.

Father and son, father-in-law and son-in-law, as well as brothers, may not be members of the municipal board and municipal council at the same time.

Persons who engage in the trades specified in the law of February 7, 1835 (Collection of Laws p. 18.) may not be mayors.

§. 29. The aldermen and the lay judges, whose number is determined in §. 27, shall be elected by the municipal council by an absolute majority of votes for a term of 6 years. Every 3 years, half of the aldermen shall retire and be replaced by new elections. Those retiring for the first time shall be chosen by lot. Those retiring may be re-elected.

In addition to the aldermen, one or more salaried members (syndic, treasurer, school board, building board, etc.) may be elected for special areas of business, if required.

The mayor and any paid members of the municipal council are elected by the municipal council by an absolute majority of votes for a term of 12 years.

§. 30. A separate vote shall be held for each member of the municipal council to be elected. If the absolute majority of votes is not achieved in the first vote, the four persons who received the most votes shall be shortlisted. If the absolute majority of votes is not achieved in this way either, a closer election shall be held between the two persons who received the most votes in the second vote. In the event of a tie, the lot decides.

§. 31. The elected mayors and aldermen require confirmation. In municipalities with more than 10,000 inhabitants, confirmation shall be the responsibility of the King; in other municipalities, it shall be the responsibility of the President of the Government. Confirmation may only be refused after consultation with the district council. If confirmation is refused, the municipal council shall proceed to a new election.

If, after consultation with the District Council, this election is also not confirmed, the King or the President of the Negation shall be entitled to make the appointment for a maximum of 6 years.

The same shall take place if the municipal council refuses the election.

§. 32. Before taking office, the members of the municipal council shall be sworn in by the mayor in a public meeting of the municipal council; the mayor shall be sworn in by the President of the Government or a commissioner to be appointed by him in a public meeting of the municipal council.

### Section III - Meetings and business of the municipal council.

§. 33. The municipal council shall decide on all municipal matters unless they have been referred exclusively to the municipal board.

It shall give its opinion on all matters which are submitted to it for this purpose by the supervisory authorities. The resolutions passed by the municipal council are binding on the municipality, but the municipal council cannot implement the resolutions passed.

The members of the municipal council are not bound by any instructions or orders from the voters or the electoral districts. The municipal council may only deliberate on matters other than municipal affairs if such matters are referred to it by special laws or, in individual cases, by orders of the

supervisory authority or the district government. The municipal council controls the administration. It is therefore entitled to satisfy itself as to the implementation of its resolutions and the use of all municipal revenues. For this purpose, it may inspect the files and appoint committees from among its members.

§. 34. The municipal council shall elect a chairman and a deputy chairman from among its members each year.

The municipal council meets as often as its business requires.

The Board of Directors shall be invited to all meetings; the municipal council may request that representatives of the Board of Directors be present.

The Board of Directors must be heard as often as it requires.

§. 35. The municipal council shall be convened by the chairman; it must be convened as soon as it is requested by one quarter of the members of the municipal council or by the municipal executive committee.

§. 36. The manner in which the meeting is convened shall be determined once and for all by the municipal council.

The meeting shall be convened by stating the subject matter of the negotiations, with the exception of urgent cases, at least two free days must be allowed.

§. 37. Regular meeting days may also be fixed by resolution of the municipal council, but even then the members of the municipal council and the executive committee must be notified of the items to be discussed at least two clear days in advance.

§. 38. The municipal council may only pass resolutions if more than half of its members are present. An exception to this shall be made if the municipal council, convened for the third time to discuss the same matter, has nevertheless not appeared in sufficient numbers.

This provision must be expressly referred to in the second and third joint appointment.

§. 39. Resolutions are passed by majority vote. In the event of a tie, the Chairman shall have the casting vote. Anyone who does not vote shall be

deemed to be present, but the majority of votes shall only be determined by the number of votes cast.

The procedure prescribed in §. 30. shall be followed for all elections.

§. 40. A person whose interests conflict with those of the municipality may not take part in negotiations concerning the rights and obligations of the municipality. If a quorate meeting cannot be held due to this exclusion, the municipal council, or if it is not authorized to pass a valid resolution for the aforementioned reason, the supervisory authority shall ensure that the interests of the municipality are safeguarded and, if necessary, appoint a special representative for the municipality.

§. 41. The meetings of the municipal council shall be public. The public may be excluded for individual items by special resolution passed in a secret meeting. Meetings may not be held in public houses or taverns.

§. 42. The chairman shall preside over the proceedings, open and close the meetings and maintain order in the meeting. He may have any member of the audience removed from the meeting room who gives public signs of approval or disapproval or causes disturbance of any kind.

§. 43. The resolutions of the municipal council and the names of the members present shall be entered in a special book.

They are signed by the chairman and at least three members. The latter may be replaced by a secretary elected by the municipal council and sworn in by the mayor at a public meeting.

All resolutions must be communicated to the municipal board.

§. 44. The municipal council decides on the use of municipal assets.

The municipal council may only decide on assets that do not belong to the municipal corporation as a whole to the extent that it is called upon to do so by the will of the parties concerned or by other legal titles.

Other persons have no claim to the assets of corporations and foundations, nor to those belonging solely to house owners or other classes of inhabitants.

§. 45. The approval of the district council is required:



1) to the sale of real estate and legal titles which are legally equivalent to those, as well as to loans which increase the debt stock of the municipality;

2) to changes in the enjoyment of communal uses (forest, pasture, heath, peat cutting, etc.).

§. 46. The municipal council may make participation in the communal uses dependent on the payment of an annual levy and, instead of or in addition to this, on the payment of a collection or purchase fee.

However, the payment of these levies, as well as other levies for special advantages conferred by residence in a municipality, may never condition the exercise of the rights specified in §§. 3. and 4.

A levy (collection fee) may also be demanded for special advantages conferred by residence in the municipality.

Such resolutions of the municipal council require the approval of the district council.

The rights of use associated with the ownership of individual plots of land or based on other special legal titles are not subject to the provisions of this paragraph.

§. 47. In order to raise the funds required by the needs or obligations of the municipality, the municipal council may decide on levies at the level of direct state taxes, with the exclusion of the tax on commercial operations in transit.

The approval of the district council must be obtained for the levying of surcharges that are not imposed in equal percentages on direct taxes, as well as for the levying of all other types of municipal taxes.

This approval is not required if no or lower surcharges are to be applied to the trade tax.

Surcharges that exceed half the amount of the state tax may only be levied with the approval of the district government.

As long as the revision of the tax legislation has not yet been completed, the municipal authorities may leave the basic rates according to which the

municipal taxes have been levied to date unchanged. If the municipal council decides to amend these principles, the above provisions shall apply.

§. 48. Resolutions of the municipal council on the disposal and substantial alteration of items of special scientific, historical or artistic value, namely archives, shall require the approval of the district government.

§. 49. The municipal council may oblige the municipality to render services (manual labour and labour services) for the purpose of carrying out municipal work; the services shall be assessed in money, the distribution shall be made according to the scale of municipal taxes or, in the absence thereof, according to the scale of direct taxes. Deviations from this method of distribution require the approval of the district council. With the exception of Roth cases, the services may be performed by suitable deputies and paid to the municipal treasury after assessment.

§. 50. The laws and provisions enacted for the individual parts of the country with regard to the treatment of communal forests shall remain in force until they have been amended by law.

§. 51. The municipal council elects the municipal collector and determines the deposits to be paid by the collector and other municipal officials.

§. 52. The collection of municipal fees, as well as the cash and accounting transactions for several municipalities, may be assigned to the same collector.

#### Section IV - On the business of the municipal board.

§. 53. As the local authority and municipal administrative authority, the municipal council has the following duties in particular:

- 1) to implement the laws, ordinances and decisions of the authorities above him;
- 2) to prepare and implement the resolutions of the municipal council.

The municipal council shall object to the implementation of such resolutions of the municipal council which it considers to be detrimental to the welfare of the municipality. If no agreement is reached between the two municipal authorities at the next municipal council meeting, the decision of

the district council shall be obtained. The same shall apply in the event that the municipal council believes that it must object to the appointment of the elected collector (§. 51.);

3) to administer the municipal institutions and to supervise those for which special administrations have been appointed;

4) to administer the revenues of the municipality, to allocate the revenues and expenditures based on the budget or special resolutions of the municipal council and to supervise the accounting and cash management. The municipal council shall be informed of every regular cash audit so that it can delegate one or more members to attend this business; in the case of extraordinary cash audits, the chairman or a member of the municipal council designated by him once and for all shall be consulted;

5) to represent the municipality in legal proceedings;

6) to administer the property of the municipality and to protect its rights;

7) to employ the municipal officials, after the municipal council has been heard on the matter, and to supervise them, including the municipal revenue officer;

8) to keep the documents and files of the municipality;

9) to represent the municipality externally and to negotiate on its behalf with authorities and private individuals, to conduct correspondence and to execute the original municipal deeds. Copies of the documents shall be validly signed on behalf of the municipality by the mayor or his deputy;

10) to distribute the municipal taxes and services among the obligated parties in accordance with the laws and resolutions, to draw up the levy lists (rolls) and, after they have been declared enforceable by the mayor, to order their collection. The levy lists must be disclosed for fourteen days before they are declared enforceable.

§. 54. The Board of Directors can only pass resolutions if more than half of its members are present.

Resolutions are passed by majority vote. In the event of a tie, the Chairman has the casting vote. The meeting is chaired by the mayor or his

deputy. The deputy also takes part in the negotiations and resolutions, except in the case of deputization.

§. 55. The mayor shall manage and distribute the business of the municipal council.

In all cases where the prior adoption of a resolution by the board of directors would cause a detrimental loss of time, the mayor must deal with the business incumbent on the municipal board alone for the time being, but must report to the latter at the next meeting in order to confirm or otherwise adopt a resolution.

§. 56. Both for the permanent administration of individual branches of business and for the handling of individual specific matters and commissions, special deputations may be formed by resolution of the municipal council from members of the executive committee, municipal councillors and municipal electors. The municipal councillors and municipal electors shall be appointed by the municipal council, the members of the executive committee by the mayor. Such deputations are subordinate to the municipal board. A member of the municipal board designated by the mayor shall chair the meeting.

§. 57. Each year, before the municipal council deals with the budget, the municipal council shall present a full report on the administration and the status of municipal affairs at a public meeting of the municipal council. The date and time of the meeting shall be announced in the municipality at least two clear days in advance.

§. 58. The mayor shall be responsible for the following matters in the municipality in accordance with the law:

1) the handling of the local police, insofar as it is not assigned to special authorities;

2) the duties of an assistant officer of the judicial police;

3) the keeping of civil status registers;

4) the duties of the Police Attorney, subject to the authority's power to delegate these duties to other officials in cases 2, 3 and 4.

The mayor at the seat of a court may also be entrusted with the representation of the police advocacy at the court for the other municipalities in the court district in return for appropriate compensation;

5) all local business of the county, district, provincial and general state administration, unless other authorities are designated for this purpose.

§. 59. With regard to the power of the municipal authorities to issue local police ordinances, the relevant laws shall apply.

## Section V. - Salaries and pensions.

§. 60. The mayors are entitled to remuneration, the aldermen are not remunerated.

The salaries of mayors and other municipal officials shall be determined by the municipal council prior to their election or appointment. However, the provincial assembly shall make the necessary general provisions with regard to these salaries.

Fixed amounts of compensation can be granted to the deputies (p. 27.).

§. 61. The following pensions shall be granted to mayors and paid members of the municipal council, unless an agreement on pensions has been reached with the approval of the district council, in the event of incapacity to work or if they are not re-elected after their term of office has expired:

1/4 of the salary after			6 years of service,		
1/2	=	=	12	=	=
2/3	=	=	24	=	=

These provisions shall not apply to mayors appointed by the State on the basis of §. 31.

The district council decides on pension claims. The decision of the district council, insofar as it does not relate to the fact of incapacity to work, may be appealed to a court of law. Notwithstanding the appeal, the amounts determined shall be paid provisionally.

The pension shall cease or be suspended to the extent that the pensioner receives an income from other employment in state or municipal service which exceeds his or her previous income when the pension is added.

## Section VI - About the municipal budget.

§. 62. The municipal council shall draw up an annual budget in September for all expenditure, income and services that can be determined in advance.

The draft shall be made available for inspection by all residents of the municipality for 14 days after prior announcement in one or more locations to be determined by the municipal council and shall then be adopted by the municipal council.

A copy of the budget is immediately submitted to the supervisory authority.

§. 63. The municipal council must ensure that the budget is managed in accordance with the budget.

Expenditures that are to be made outside the budget require the approval of the municipal council.

§. 64. The municipal taxes and the monetary amounts of the services (p. 49.), as well as the taxes for the participation in the uses (§. 46.) and the other municipal charges shall be levied by the collector and shall be collected from the defaulters by way of tax execution.

§. 65. The annual accounts shall be prepared by the collector before May 1 of the following year and submitted to the municipal council. The latter shall audit the accounts and submit them with its reminders and comments for examination, approval and discharge. remarks to the municipal council for examination, approval and discharge.

Once the accounts have been approved, they are made available to the ? members of the congregation (p. 62.). The parish council may ?? be present during the audit.

§. 66. ?? Approval of the accounts must be effected before September 1.

The mayor must immediately submit a copy of the declaratory resolution to the supervisory authority.

§. 67. The municipal council shall keep a stock ledger of all parts of the municipal assets. Any changes therein shall be submitted to the municipal council for explanation when the accounts are approved.

### Title III - Municipalities with no more than 1,500 inhabitants.

#### Section I. - On the composition and election of the municipal council.

§. 68. The municipal council shall, as a rule, consist of 6 members in addition to the head of the municipality (Section 94).

This number may be reduced to 3 or increased to 12 by resolution of the district committee after consultation with the municipal electors.

In addition to the elected members, the municipal council shall also include those landowners resident in the municipal district who have the required characteristics of municipal electors (§. 4.) and who contribute more than the total municipal taxes.

If the persons so entitled are legal entities or persons or women under guardianship or curatorship, representation shall take place. The representatives must be municipal voters.

§. 69. For the purpose of electing the municipal council, the municipal electors (§§. 4. and 5) shall be divided into three divisions according to the direct taxes they are required to pay (municipal, county, district, provincial and state taxes).

The first division consists of those who pay the highest amounts up to one third of the total amount of taxes of all municipal voters.

The first division also includes those whose tax amount falls only partially into the first third. The remaining voters form the second and third divisions, the second reaching up to half of the total tax of these voters.

Taxes that are paid for property or business operations in another municipality (§. 3.), as well as taxes for trades carried out while moving around, are not to be taken into account when forming the divisions.

The services (§. 110.) shall be taken into account in the same way as the levies, insofar as they are included in the erat (§. 120.).

No voter may belong to two divisions at the same time.

If neither the amount of tax nor the alphabetical order of names can be used to determine which of several voters belongs to a particular division, the lot shall decide.

Each division elects one third of the members of the municipal council, without being bound by the voters of the division.

§. 70. Municipalities consisting of several localities may be divided into electoral districts. The number and boundaries of the electoral districts, as well as the number of municipal councillors to be elected from each of them, shall be determined by the head of the municipality in accordance with the number of voters.

§. 71. In municipalities comprising several localities, the district committee may determine, in proportion to the number of inhabitants, how many members of the municipal council are to be elected from each individual locality.

§. 72. Half of the municipal councillors to be elected by each division must consist of landowners (proprietors, usufructuaries and those who have a hereditary right of possession). If there are no or only very few landowners in a municipality, tenants may be elected instead of or like them. The district committee shall determine the details of this for each individual place.

§. 73. Members of the municipal council cannot be:

- 1) members of the supervisory authority appointed by the state;
- 2) municipal officials who are not members of the municipal council;
- 3) members of the district, municipal and regional courts, including the individual judges of their judicial districts; likewise members of the higher courts;
- 4) civil servants, the state bar;
- 5) police officers;



6) Persons belonging to the standing army and to the land defence tribes. Father and son, as well as brothers, may not be members of the municipal council at the same time. If such relatives are elected at the same time, the older one alone shall be admitted.

§. 74. The members of the municipal council shall be elected for 6 years. However, each election loses its effect when eligibility ceases (p. 4.). Every two years, one third shall retire and be replaced by new elections. Those retiring for the first and second time are determined by lot for each division.

§. 75. A list of the municipal electors proving the required qualifications of the same shall be kept by the head of the municipality and corrected annually in July.

The list shall be divided according to the electoral divisions and, in the case of §. 70, according to the electoral districts.

§. 76. From July 1 to 15, the head of the municipality shall proceed to correct the list.

From July 15 to July 30, the list will be published in one or more public places in the municipality.

During this period, any resident of the municipality may raise objections to the accuracy of the list with the head of the municipality.

The municipal council will decide on this by August 15.

Within 10 days of notification of the decision, an appeal may be lodged with the district committee, which shall make a final decision within four weeks.

If the name of a resident who has once been included in the list is to be deleted from the list, the head of the municipality shall inform the resident of this eight days in advance, stating the reasons.

§. 77. Elections for regular additions to the municipal council shall be held every two years in November. The elections of the third division shall be held first, those of the first division second.

Extraordinary elections to replace members who have resigned during the term of office may be arranged by the municipal council or ordered by the district committee. The substitute shall remain in office only until the end of the 6-year term for which the retiring member was elected.

All supplementary or replacement elections shall be held by the same divisions and districts (§. 70.) by which the retiring member was elected.

If the number of municipal councillors to be elected cannot be divided by three, then if only one remains, he shall be elected by the second division. If two remain, the first division shall elect one and the third division the other.

§. 78. The municipal council shall at all times make the necessary determination to supplement the required number of landowners (Section 72).

If the number of landowners to be elected cannot be divided by the number of electoral districts, the allocation to the individual electoral districts shall be determined by lot.

With this restriction, retiring members of the municipal council can be re-elected at any time.

P. 79. Fourteen days before the election, the voters on the list (§§. 75., 76.) shall be summoned to the election by the head of the municipality by means of a written invitation or local announcement. The invitation or notice must specify the place, the days and the hours during which the votes are to be cast before the electoral board.

§. 80. The election committee shall consist of the head of the municipality or a deputy appointed by him as chairman and two assessors elected by the municipal council. The municipal council shall elect a deputy for each assessor.

§. 81. Every voter must declare orally to the electoral board for the record whom he wishes to vote for. He shall designate as many persons as are to be elected.

Only those voters mentioned in §. 5. who live outside the municipality, who are subject to the highest rate of taxation and legal entities, as well as voters who have been removed from their municipal district due to military

service, may exercise their right to vote by proxy. The proxies must themselves be municipal voters.

If the power of attorney is not issued in certified form, the election committee shall make the final decision on its recognition.

§. 82. Those who receive an absolute majority of votes (more than half of the votes) in the first vote are elected. If the first vote does not result in an absolute majority of votes for as many persons as are to be elected, a second election shall be held.

The election committee compiles the names of those who have received the most votes next to those elected so that twice the number of members still to be elected is reached. This compilation is then deemed to be the list of those eligible for election.

The voters shall be called to the second election eight days in advance by an announcement of the election committee stating the result of the first election. An absolute majority of votes is not required for the second election.

Among those who have received an equal number of votes, the lot is decisive.

Anyone elected in more than one division or district must declare which election he wishes to accept.

The election records shall be signed by the election committee and kept by the head of the municipality. The head of the municipality shall immediately announce the result of the completed election.

Any voter of the municipality may lodge a complaint with the supervisory authority against the election procedure that has taken place within 10 days of the announcement.

In the event of significant irregularities, the supervisory authority shall declare the elections invalid upon complaint or ex officio within 20 days of the announcement by means of a motivated decision.

§. 84. The members of the municipal council newly elected at the regular supplementation shall take up their duties at the beginning of the year

following their election; the retiring members shall remain in office until then.

The head of the municipality shall order the introduction of the elected members and their commitment by shaking hands on oath.

## Section II - On the composition and election of the municipal council.

§. 85. The municipal council shall consist of a municipal mayor and two aldermen, who shall support the municipal mayor and, if he is unable to do so, deputize for him. position in cases of incapacity.

Where the number of members of the municipal council (magistrate) has been greater according to the previous provisions, the latter shall remain the case as long as the municipal council has not decided on a reduction with the approval of the district committee.

In the localities mentioned in §. 71, the head of the municipality may, at the discretion of the district administrator, be represented by a member of the municipal council residing there, who shall be elected by the latter.

§. 86. In addition to the aldermen, one or more salaried members (chamberlains, etc.) may be elected for special branches of business where the need arises.

The aldermen may be members of the municipal council.

§. 87. Members of the municipal board cannot be:

1) the members of the supervisory authority appointed by the state government;

2) Clergymen and teachers at public schools;

3) the members of the judiciary and the officials of the public prosecutor's office;

4) the police officers;

5) the persons belonging to the standing army and the land defence tribes.

Father and son, father-in-law and son-in-law, as well as brothers, may not be members of the municipal board and municipal council at the same time.

Persons who engage in the trades specified in the law of February 7, 1835 (Collection of Laws p. 18.) may not be municipal officers.

§. 88. The head of the municipality, who must be resident in the municipal district, as well as the aldermen, shall be elected by the municipal council by an absolute majority of votes.

§. 89. A separate vote shall be held for each member of the municipal council to be elected. If the absolute majority of votes is not achieved in the first vote, the four persons who received the most votes shall be put forward for a shortlist. If the absolute majority of votes is not achieved in this way either, a closer election shall be held between the two persons who received the most votes in the second vote. In the event of a tie, the lot decides.

§. 90. The election of the head and the aldermen shall be for 6 years.

After three years of service, the municipal councillor may be elected by the municipal council for a term of 12 years.

One of the aldermen retires every three years and is replaced by a new alderman. The person retiring for the first time is chosen by lot. The retiring alderman can be re-elected.

§. 91. The elected municipal councillors and aldermen require confirmation by the district president.

This confirmation can only be refused after consultation with the district committee.

If the election is not confirmed, the municipal council shall proceed to a new election.

If, after hearing the district committee, this election is also not confirmed, the district administrator shall be entitled to appoint the head or the lay assessors for a maximum term of 6 years.

The same shall take place if the municipal council refuses the election.

§. 92. Before taking office, the members of the municipal council shall be sworn in and sworn to duty by the district administrator or a commissioner to be appointed by him in a public meeting of the municipal council.

### Section III - Meetings and business of the municipal council.

§. 93. The municipal council shall decide on all municipal matters, insofar as these are not exclusively referred to the head of the municipality. It shall give its opinion on all matters which are submitted to it for this purpose by the supervisory authorities.

The resolutions passed by the municipal council are binding for the municipality, but the municipal council cannot implement the resolutions passed.

The members of the municipal council are not bound by any instructions or orders from the voters or the electoral districts. The municipal council may only deliberate on matters other than municipal affairs if such matters are referred to it by special laws or, in individual cases, by orders of the supervisory authority or the district government. The municipal council controls the administration. It is therefore entitled to satisfy itself as to the implementation of its resolutions and the use of all municipal revenues. For this purpose, it may inspect the files and appoint committees from among its members.

§. 94. The municipal council shall meet as often as its business requires. The head of the municipality shall be the chairman of the municipal council with voting rights.

§. 95. The municipal council shall be convened by the head of the municipality; it must be convened as soon as one quarter of the members of the municipal council so request.

§. 96. The manner in which the meeting is convened shall be determined once and for all by the municipal council.

The meeting shall be convened stating the subject matter of the hearing; with the exception of urgent cases, it must be held at least two clear days in advance.

§. 97. Regular meeting days may also be fixed by resolution of the municipal council, but even then the members of the municipal council and the head of the council must be notified of the items to be discussed at least two clear days in advance.

§. 98. The municipal council may only pass resolutions if more than half and at least 3 of its fine members, including the chairman, are present. An exception to this shall be made if the municipal council, convened for the third time to discuss the same matter, has nevertheless not appeared in sufficient numbers.

This provision must be expressly referred to in the second and third joint appointment.

§. 99. Resolutions are passed by majority vote. In the event of a tie, the Chairman shall have the casting vote. Anyone who does not vote shall be deemed to be present, but the majority of votes shall only be determined by the number of votes cast.

The procedure prescribed in §. 89. shall be followed for all elections.

§. 100. A person whose interests conflict with those of the municipality may not take part in negotiations concerning the rights and obligations of the municipality. If a quorate meeting cannot be held due to this exclusion, the head of the municipality or, if he is also involved for the aforementioned reason, the supervisory authority shall ensure that the interests of the municipality are safeguarded and, if necessary, appoint a special representative for the municipality.

§. 101. The meetings of the municipal council shall be public. The public may be excluded for individual items by special resolution passed in a secret meeting. Meetings may not be held in public houses or taverns.

§. 102. The chairman shall preside over the proceedings, open and close the meetings and maintain order in the meeting. He may have any member of the audience removed from the meeting room who gives public signs of approval or disapproval or causes disturbance of any kind.

§. 103. The resolutions of the municipal council and the names of the members present shall be entered in a special book,

They are signed by the chairman and at least one member. The latter may be replaced by a secretary elected by the municipal council and sworn in for this purpose at a public meeting.

§. 104. By resolution of the municipal council and with the approval of the district committee, the requirement to record minutes of resolutions of the municipal council may be restricted to certain matters.

§. 105. The municipal council decides on the use of municipal assets.

The municipal council may only decide on assets that do not belong to the municipal corporation as a whole to the extent that it is called upon to do so by the will of the parties concerned or by other legal titles.

Other persons have no claim to the assets of corporations and foundations, nor to those belonging solely to house owners or other residents.

§. 106. The municipal council may make participation in the use of municipal services dependent on the payment of an annual levy and, instead of or in addition to this, on the payment of a collection or purchase fee. The municipal council may make participation in communal use dependent on the payment of an annual levy and, instead of or in addition to this, on the payment of a collection or purchase fee.

A levy (collection fee) may also be demanded for special advantages conferred by residence in the municipality.

Such resolutions of the municipal council require the approval of the district committee.

The rights of use associated with the ownership of individual plots of land or based on other special legal titles are not subject to the provisions of this paragraph.

§. 107. In order to raise the funds required by the needs or obligations of the municipality, the municipal council may adopt levies based on direct state taxes, with the exclusion of the tax on commercial enterprises.



The approval of the district council must be obtained for the levying of surcharges that are not imposed in equal percentages on direct taxes, as well as for the levying of all other types of municipal taxes.

This approval is not required if no or lower surcharges are to be applied to the trade tax.

Bush taxes that exceed half the amount of the state tax may only be levied with the approval of the district government.

As long as the revision of the tax legislation has not yet been completed, the municipal authorities may retain the basic rates according to which the municipal taxes have been levied to date. If the municipal council decides to amend these basic rates, the above provisions shall apply.

§. 108. The voluntary sale of municipal properties and such properties that are legally equivalent to them is required:

- a) Agreement between the municipal council and the head of the municipality;
- b) approval by the supervisory authority, and
- c) public licensing on the ground of a tare.

The approval of the district committee is required for changes in the use of communal land (forest, pasture, heath, peat cutting, etc.).

§. 109. Resolutions of the municipal council on the disposal and substantial alteration of items of special scientific, historical or artistic value, namely archives, shall require the approval of the district government.

§. 110. The municipal council may oblige the municipality to render services (manual labour and labour services) for the purpose of carrying out municipal work; the services shall be assessed in money, the distribution shall be made according to the scale of municipal taxes or, in the absence thereof, according to the scale of direct taxes. Deviations from this method of distribution require the approval of the district council. With the exception of emergencies, the services may be performed by suitable deputies or paid to the municipal treasury according to the assessment.

§. 111. The laws and regulations enacted for the individual parts of the country with regard to the treatment of communal forests shall remain in force until they have been amended by law.

§. 112. The municipal council elects the municipal collector and determines the deposits to be paid by the collector and other municipal officials.

§. 113. The collection of municipal taxes, as well as the collection and accounting for several municipalities, may be assigned to the same collector.

#### Section IV - On the business of the municipal board.

§. 114. As the local authority and municipal administrative authority, the head of the municipality shall in particular be responsible for the following matters:

1) to implement the laws, ordinances and decisions of the authorities above him;

belonged there:

a) the administration of the local police, insofar as it is not assigned to special authorities;

b) the duties of an assistant officer of the judicial police;

c) all local business of the county, district, provincial and general state administration, unless other authorities are designated for this purpose.

The keeping of the civil status register and the duties of the police lawyer may not be transferred to the head of the municipality against his will;

2) to prepare and implement the resolutions of the municipal council.

The head of the municipality shall object to the implementation of such resolutions of the municipal council which he considers to be detrimental to the welfare of the municipality. If no agreement is reached between the two municipal authorities at the next municipal council meeting, the decision of the district committee shall be obtained. The same shall apply in the event

that the head of the municipality believes that he must object to the appointment of the elected collector (§. 112.);

3) to administer the municipal institutions and to supervise those for which special administrations have been appointed:

4) to administer the income of the municipality, to allocate the income and expenditure based on the budget or special resolutions of the municipal council and to supervise the accounting and cash management. The municipal council shall be informed of every regular audit so that it can delegate one or more members to attend this business; in the case of extraordinary audits, the chairman or a member of the municipal council designated by him once and for all shall be consulted;

5) to represent the municipality in legal proceedings;

6) to administer the property of the municipality and to protect its rights;

7) to employ and supervise the municipal officials, including the municipal revenue officer, after the municipal council has been heard on the matter;

8) to keep the documents and files of the municipality;

9) to represent the municipality externally and to negotiate with authorities and private individuals on its behalf, to conduct correspondence and to execute the municipal deeds by signing them. Copies of the documents shall be validly signed on behalf of the municipality by the head of the municipality or his deputy;

10) to distribute the municipal taxes and services among the obligated parties in accordance with the laws and resolutions, to draw up the levy lists (rolls) and, after they have been declared enforceable, to order their collection. The levy lists must be disclosed for fourteen days before they are declared enforceable.

§. 115. Special deputations consisting of municipal councillors and municipal voters may be elected by the municipal council both for the permanent administration of individual branches of business and for the handling of individual specific matters and commissions. A member of the municipal council to be designated by the head of the municipality shall be

the voting chairman of such deputations. Such deputations shall be subordinate to the head of the municipality.

§. 116. Every year, before the municipal council deals with the budget, the head of the municipality shall give a full report on the administration and the state of the municipality's affairs at a public meeting of the municipal council. The date and time of the meeting shall be announced in the municipality at least two clear days in advance.

§. 117. With regard to the power of the municipal authorities to issue local police ordinances, the relevant laws shall apply.

### Section V. - On the remuneration of the heads of municipalities.

§. 118. The municipal councillors shall be entitled to a remuneration commensurate with their official duties and expenses. In the absence of an association, this shall be determined by the district committee after hearing the municipal council.

Uses from communal land which were previously transferred to the head of the commune as compensation for his work may also be used for this purpose.

§. 119. The municipal councillors shall not receive a pension unless it is guaranteed to them by a resolution of the municipal council approved by the supervisory authority.

The pension shall cease or be suspended to the extent that the pensioner receives an income from other employment in state or municipal service which exceeds his or her previous income when the pension is added.

### Section VI - About the municipal budget.

§. 120. For all expenses, revenues and services that can be determined in advance, the head of the municipality drafts a budget in September of each year. The draft shall be published for 14 days after prior announcement in one or more premises to be determined by the municipal council for inspection by all inhabitants of the municipality and shall then be adopted by the municipal council.

The budget is drawn up for 3 years if it is decided by the municipal council and approved by the district committee.

A copy of the budget is immediately submitted to the supervisory authority.

§. 121. The head of the municipality shall ensure that the budget is managed in accordance with the budget.

Expenditures that are to be made outside the budget require the approval of the municipal council.

§. 122. The municipal taxes and the monetary amounts of the services (§. 110.), as well as the taxes for the participation in the uses (§. 106.) and the other municipal charges shall be levied by the collector and shall be collected from the defaulters by way of tax execution.

§. 123. The annual accounts shall be prepared by the collector before May 1 of the following year and submitted to the head of the municipality. The latter shall audit the accounts and submit them, together with his reminders and comments, to the municipal council for examination, approval and discharge. Once the accounts have been approved, they shall be made available for inspection by the members of the municipality for a period of 14 days.

§. 124. The adoption of the accounts must be effected before September 1. The head of the municipality shall immediately submit a copy of the resolution of approval to the supervisory authority.

§. 125. The head of the municipality shall keep a stock ledger of all parts of the municipal assets. Any changes therein shall be submitted to the municipal council for explanation when the accounts are approved.

#### Title IV - About the municipalities and police districts.

§. 126. Municipalities that do not meet the purposes of the municipal association on their own may unite with one or more neighbouring municipalities to form a collective municipality.

The municipalities belonging to a collective municipality are called individual municipalities.

Municipalities which are unable to establish a sufficient police administration on their own shall be united with neighbouring municipalities to form a police district. The formation of such districts shall be effected by the State Government; associations of two or more municipalities which are or will be established for individual and specific purposes in the public or municipal interest shall not be affected by the provisions of this Act.

§. 127. Each individual municipality shall be represented in its particular affairs by a municipal council and administered by a municipal board.

§. 128. The administration of the individual municipalities shall be supervised by the head of the collective municipality (mayor, senior mayor). The same may, as often as he deems appropriate, preside over the municipal council in each individual municipality, and must lead the deliberations on the budget and the accounts, as well as declare the levy lists enforceable.

§. 129. With the exception of the points listed in p. 128, the same provisions shall apply to the representation and administration of the individual municipalities as are given in Titles II and III of this Act for the municipalities not belonging to a joint municipality.

§. 130. Each collective community is represented by a collective council for the common affairs of its individual communities and is administered by a head (mayor, head mayor) who lives within the collective community.

One or more deputies are elected to deputize for the head in cases of disability. The deputies may be members of the municipal council.

§. 131. What is to be counted as common matters shall be decided by the individual municipalities. The decision requires the confirmation of the district council.

The proportion in which the individual municipalities are to contribute to the common needs and burdens of the collective municipalities shall be determined by the district council after hearing the municipal councils of the individual municipalities and the collective municipal council. Insofar as the individual municipalities agree on this matter, the district council shall merely confirm their agreement.

§. 132. Each individual municipality shall elect at least one member to the collective municipal council. If the individual municipalities are of very

unequal size, the number of members shall be increased in the more densely populated municipalities, which shall be decided by the district council.

Elections shall be held by the municipal councils of the individual municipalities in accordance with the provisions of SS. 29. and 30.

The members of the municipal councils shall only receive an allowance for their cash expenses, but no travel or subsistence expenses.

§. 133. The head of the collective community has the chairmanship with voting rights in the collective council. Apart from that, the head of the collective municipality, its deputies and the collective municipal council have the same rights and duties with regard to the collective municipality as are attached to the municipal board, the mayor and the deputies on the one hand, and to the municipal council with regard to the municipalities not belonging to a collective municipality in Title II of this Act on the other.

The provisions of §§. 29, 30 and 31 shall apply to the election, confirmation or appointment of the head of the collective municipality and his or her deputies; however, the president of the government shall also be entitled to confirm the head of the collective municipality if the municipality has more than 10,000 inhabitants.

The provisions of §§. 60. and 61 shall apply with regard to the entitlements of the heads of the collective municipalities to salary and pension, and of the deputies to compensation.

§. 134. Those matters in which more than one, but not all, of the individual municipalities of a collective municipality are involved also belong to the scope of business of the head and the collective municipal council; however, the representatives of the non-involved municipalities do not have a say in such matters.

§. 135. The heads of the collective municipalities (Section 126) may be entrusted by the State Government with the matters specified in Section 58.

Where police districts have to be formed (§. 126.), special district officers (district officials) shall be appointed for the duties specified in §. 58. The office of the same shall be an honorary office to be filled by the state government from among the inhabitants of the district for a term of three years and to be administered free of charge.

If no suitable resident is found who is willing to take over the office, the business shall be administered by a commissioner appointed by the state government at the expense of the district until such a resident is found.

In any case, the necessary building costs are to be borne by the municipalities concerned as determined by the district government.

The extent to which the state has to contribute to these costs is to be determined in accordance with the general statutory provisions on the establishment of the local police administration.

§. 136. In police matters (Section 58 1. and 2.) the heads of the municipalities are organs and auxiliary authorities of the head of the collective municipality or the district officer.

#### Title V. - Receipt of the obligation to accept jobs.

§. 137. Every municipal elector is obliged to accept an unsalaried position in the municipal administration or representation and to hold an accepted position for at least 3 years.

Only the following excuses justify refusal or earlier resignation from such a position:

- 1) persistent diseases;
- 2) Business that involves frequent or prolonged absence;
- 3) an age over 60 years;
- 4) the previous administration of an unpaid position for the next three years;
- 5) the administration of another public office;
- 6) medical or wound care practices;
- 7) other special circumstances which, at the discretion of the municipal council, justify a valid excuse.



Any person who, without one of these excuses, refuses to accept an unpaid position in the municipal administration or representation, or to continue to hold such a position for less than three years, as well as any person who actually evades the administration of such positions, may be deprived by resolution of the municipal council of the rights conferred on municipal electors by this law for a period of 3 to 6 years.

The resolution of the municipal council requires the confirmation of the supervisory authority. (§. 138.)

## Title VI - Supervision of the municipal administration.

§. 138. The supervision of the administration of municipal affairs shall, unless otherwise expressly provided by the provisions of this Act, be exercised by the district council in the case of municipalities of more than 10,000 inhabitants, in the case of other municipalities by the district committee in the first instance and by the district council in the second instance. The latter may issue orders to the district committee.

§. 139. Complaints about decisions in municipal matters may only be lodged within four weeks of notification or announcement, unless they are subject to other time limits under the provisions of this Act,

§. 140. If the municipal council has passed a resolution which exceeds its powers, violates the law or the interests of the state, the mayor or the head of the municipality, or in the case of a collective municipality the head of the municipality, shall prohibit its execution by virtue of office or at the behest of the state administrative authority. The latter is then obliged to obtain the decision of the President of the Government immediately and to inform the municipal council thereof. After consultation with the district council, the district president shall give his decision, stating the reasons.

§. 141. If the municipal council omits or refuses to enter in the budget the services legally incumbent on the municipality or to approve them extraordinarily, the president of the government, after consultation with the district council, shall have the entry made in the budget ex officio, citing the law, or shall determine the extraordinary expenditure.

§. 142. In the cases referred to in sections 140 and 141, the municipal council shall have ten days to appeal against the decision of the district president to the Minister of the Interior.

In the case of municipalities which are administered in accordance with the provisions of Title III, the decision reserved in §§. 140. and 141 to the district president after consultation with the district council shall be made by the district administrator after consultation with the district committee. An appeal against the district administrator's decision may be lodged with the district president within ten days.

§. 143. The Minister of the Interior may temporarily remove a municipal council, a municipal councillor or a joint municipal councillor from his duties for a maximum of one year and transfer them to special commissioners. The final determination shall then be made by a law, the draft of which shall be submitted to the chambers as soon as they are assembled.

§. 144. With regard to official misconduct by mayors, members of the executive board and other municipal officials, the relevant laws shall apply.

## Title VII - Implementing and transitional provisions

§. 145. The temporary provisions necessary for the implementation of this Act shall be made by the Minister of the Interior.

§. 146. Where municipal districts do not yet exist, their formation shall first be effected in a manner appropriate to the purposes of the association of municipalities. In particular, individual properties and estates which do not yet belong to a municipality shall be declared independent municipalities, or united with one another to form municipalities, or joined with existing municipalities,

Individual properties that are located in the district of a municipality but previously belonged to another municipality are to be incorporated into the former.

§. 147. The execution of these provisions (p. 146.) and any necessary regulation of the property relations of the newly united parts of the municipality shall be carried out, after hearing the parties concerned, by a district commission to be established in each district, from which an appeal shall be made to a district commission to be established in each government district. The district commission shall make the final decision on the

contested decisions of the district commission. In all cases, these decisions are subject to confirmation by the Minister of the Interior.

§. 148. The district commission exists:

1) a commissioner appointed by the government, who chairs the meeting and casts the deciding vote in the event of a tie;

2) three deputies or their deputies elected by the landowners hitherto represented in the estates;

3) from those three elected deputies of the rural communities who are members of the district council, or their deputies. If the rural communities are represented by more than three elected deputies at the district assemblies, they shall elect the three members of the commission from among their number;

4) three members elected by the representatives of the cities at the district assemblies

Members of Parliament or their deputies.

§. 149. The district commission consists of:

1) the District President, who chairs the meeting and casts the deciding vote in the event of a tie;

2) three of the landowners previously represented on the estate or their deputies;

3) three of the landowners previously represented in the state of the rural communities or their deputies;

4) three representatives of the cities, The members mentioned under 2. to 4. are appointed by the Minister of the Interior after hearing the opinion of the District President and the Chief President.

The decisions of the county and district commissions shall be made by majority vote. If no town is involved in the formation of a new municipal district, the representatives of the towns shall abstain from voting on the resolutions in question, just as, in the case of the involvement of a town, the

representatives of classes 2 and 3, which may be uninvolved, shall do the same.

§. 150. The alteration of already existing collective municipal districts (mayoral districts in the Rhine Province, offices in the Province of Westphalia) can only take place after the introduction of the new county, district and provincial regulations, unless all municipalities concerned are in agreement. The provincial assembly shall soon make the necessary general provisions with the approval of the King.

§. 151. A change in existing municipal districts or in newly formed municipal districts in accordance with Section 146 may not occur until the present law has been fully implemented, unless two or more of the existing municipalities wish to unite into one municipality immediately upon the introduction of these municipal regulations.

§. 152. The functions assigned in this law to the municipal council, the municipal board, the mayor, the district committee and the district council shall, where and as long as such authorities do not yet exist, be exercised by such authorities as the Minister of the Interior shall designate.

§. 153. If the newly elected municipal council, after two repeated deliberations with intervals of eight days, is of the opinion that instead of the collegial municipal council it is appropriate to elect only a mayor, who shall at the same time chair the municipal council, with one or more deputies, this arrangement shall remain in force for the time being until the provincial assembly decides otherwise.

§. 154. When the municipal code is introduced, the present municipal council, where one exists, may decide, with the approval of the district council, whether the provisions of Title II or Title III should first be applied to the municipality.

§. 155. For municipalities in which an elected representative body has not yet existed, and in which the conditions for the establishment of such a representative body and a municipal council formed in accordance with the provisions of Title III are not yet in place, a head may be appointed by the supervisory authority for the time being, subject to a provision to the contrary by the provincial assembly, to manage the administration and represent the municipality. In the election of this head, the landowners belonging to the municipality shall be given preference, provided they are qualified.

§. 156. The date on which the introduction of the present municipal constitution will be completed in the individual municipalities shall be published in the official gazette of the district. From this date, the previous laws and ordinances on the constitution of the municipalities shall cease to apply to the municipalities concerned.

§. 157. The former non-elected Lord Mayors, Mayors and Officers who have not been expressly employed on notice and who are neither retained in their offices and posts nor otherwise employed with the same income upon the introduction of the present municipal code shall be entitled to a pension, unless another binding provision has been made for this case earlier.

Those of these civil servants who are employed on notice of termination, which, however, has never been used according to custom or only for special reasons, are to be regarded as civil servants employed for life, unless one of the reasons for which termination is reserved occurs. Civil servants who are only temporarily and provisionally employed without a fixed term are only entitled to this right after 6 years of service.

The pension amounts to:

after less than 12 years of service  $\frac{1}{4}$ , after 12 or more than 12 years of service  $\frac{1}{2}$  after 24 years of service  $\frac{2}{3}$

of the previous pure service income. The pension shall cease or be suspended to the extent that the pensioner receives an income from other employment in state or municipal service which exceeds his previous income when the pension is added.

The mayor and local and community leaders are not entitled to a pension.

Pensions are paid by the municipalities in which the civil servants are currently employed.

§. 158. All municipal officials not mentioned in Section 157 shall retain their offices and incomes and shall retain their previous pension entitlements.

Authenticated under Our Supreme Signature and the Royal Insignia  
printed herewith

Given Charlottenburg, March 11, 1850.

(L. S.) Friedrich Wilhelm.

Gr. v. Brandenburg. b. Ladenberg. Manteuffel. v. b. Heydt.  
v. Rabe. Simons. v. Schleinitz. v. Stockhausen.

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### **33. District, District and Provincial Order for the Prussian State: From March 11, 1850.**

We Frederick William by the Grace of God, King of Prussia etc. etc. decree, with the consent of both Houses, the following:

Art. 1. The counties, districts and provinces are entitled to the self-government of their affairs (Art. 2.) with the cooperation of the State Government. The organs of the State Government are the District Councils, the Presidents of the Government and the Chief Presidents; they are appointed by the King.

Art. 2. District and provincial matters are the construction, establishment and alteration of district and provincial institutions, facilities in the special interest of the district or province (roads, canals, railroads, meliorations etc.), acquisition, use and disposal of district and provincial property.

District affairs include the district roads and the institutions that are the property of a district.

What is also to be regarded as county, district and provincial matters will be determined by special laws concerning the poor, corporations and institutes, the construction of roads, waterways and banks, dykes, improvements to land culture and other matters.

Title 1 - Of the circles.

Limitation.

Art. 3. The districts shall continue to exist in their present extent as corporations and administrative districts. Changes to the district boundaries may only be made by law.

#### District meeting.

Art. 4. The district assembly shall decide on district matters.

#### District Committee.

The district committee is responsible for the administration of district affairs.

Art. 5. Districts consisting of only one municipality or collective municipality shall have no district assembly and no district committee. Their functions shall be exercised by the municipal councils and the municipal boards.

#### Election of the district assembly.

Art. 6. The district assembly shall consist of 15 to 40 district deputies elected by the representatives of the municipalities. Where collective municipalities exist, the right to vote shall be exercised by the members of the collective municipal council for all individual municipalities.

The district council shall, according to the population, determine the number of district deputies and allocate them to the individual electoral districts.

The district council may unite several municipalities into one electoral district. In this case, the representation of each municipality elects at least one member from among its members to the electoral assembly. If the combined municipalities are of very unequal size, the number of members to be elected shall be increased in the more populated municipalities as determined by the district council. If the constituent parts of an electoral district include one or more consolidated municipalities, the electoral assembly shall consist of all the members of the consolidated municipal councils and an appropriate number of representatives of the other municipalities belonging to the electoral district to be determined by the district council.

Every municipal voter of the district who has reached the age of 30, has belonged to the district for at least three years through property ownership or residence, and pays an annual class tax rate of eight thalers, or in the localities subject to mill and slaughter tax proves a property worth at least 5000 Rthlr. or an annual pure income of 500 Rthlr. is eligible for election. For localities subject to class tax, however, this class tax rate may be reduced to six Thaler per annum or increased to eighteen Thaler per annum by a resolution of the Provincial Assembly to be approved by the King.

At least half of the district deputies must be landowners.

Art. 7. The district deputies are elected for 6 years. The election shall cease to have effect when the conditions of eligibility cease to apply. Every two years, a third shall retire and be replaced by new elections. Those retiring may be re-elected.

Art. 8. Every second year the elections for the regular completion of the district assembly shall take place on one and the same day in the last half of the month of January. Extraordinary elections to replace members who have resigned during the term of office shall be arranged by the District Administrator. The replacement shall only take office for the period for which the retiring member was elected.

Art. 9. The district deputies shall be elected by an absolute majority of votes. If the absolute majority of votes is not obtained in the first ballot, the four persons who have received the most votes shall be put to a second ballot. If the absolute majority of votes is not achieved in this way either, a closer election shall take place between the two persons who received the most votes in the second vote. In the event of a tie, the lot decides.

If several municipalities have been combined into one electoral district, the district president shall determine the place of the election and the chairperson of the electoral assembly, as well as a deputy chairperson.

If several district deputies are to be elected by the same electoral assembly, each deputy to be elected must be voted on separately.

The election protocols are submitted in writing to the district council, which decides on any complaints received and then sends all election proceedings to the district administrator,



The district president shall immediately announce the results of the elections in the gazette, but if no such publication is made, in the next public newspaper, and shall at the same time send each elected deputy an extract from the election record, but shall submit the election record itself to the next Kreistag.

### Powers of the district assembly.

Art. 10. The district assembly shall bind all district inhabitants by its resolutions passed in district matters. In particular, it shall have the right to decide on expenditures for county affairs, as well as for the removal of an emergency, and to distribute the same among the municipalities of the county. In the same way, the district assembly shall also allocate those expenditures which are to be made by district, unless the law provides otherwise. The result of the resolutions passed shall be brought to the attention of the municipalities, which shall be free to appeal to the district council within ten days of notification.

Art. 11. The approval of the Ministers of the Interior and of Finance shall be required for all decisions by which the municipalities are to be obliged to contribute to county expenditure in excess of three years or to pay more than 10 percent of direct state taxes.

Art. 12. In order to avert or alleviate an emergency situation in the district, the district assembly may, without further authorization, decide to levy a one-time district tax of up to 5 percent of the direct state taxes even if the total amount of the district tax to be paid by the municipalities of the district exceeds 10 percent of the state tax.

Art. 13. Resolutions on borrowings by the district municipalities shall require the approval of the district council.

Stop Decisions on guarantees by the district municipalities require the confirmation of the Minister of the Interior.

Art. 14. The district assembly shall adopt the district accounts and the district budget each year. However, the district budget shall be drawn up for three years if this is decided by the district assembly and approved by the district council. The district assembly may leave the approval of the accounts to a specially appointed commission. All income and expenditure of the district, including those services which the law declares to be a liability of the district, must be included in the budget.

### Consultations of the district assembly.

Art. 15. The district deputies shall assemble for the ordinary session (district assembly) once a year in the first half of March at the seat of the district administrator's office or in another conveniently situated place in the district as decided by the district assembly with the approval of the district council. The district assembly may be convened extraordinarily by the district administrator at any time by means of a written invitation stating the reason for the meeting. The meeting must be convened if it is requested by more than a quarter of the members of the district assembly. The date and the reason for the extraordinary meeting must be publicly announced by the district administrator.

Art. 16. Under the chairmanship of the oldest deputy, who shall be assisted by the two youngest deputies as secretary and scrutineer, the district assembly shall elect its chairman, a deputy and two secretaries for a term of one year at the regular meeting (Art. 15.). The district assembly shall regulate its course of business by means of rules of procedure.

Art. 17. The meetings of the district assembly shall be public. The public may be excluded for individual matters by a resolution of the Assembly to be adopted in secret session.

Art. 18. The district assembly may only pass resolutions if more than half of its members are present. An exception to this rule shall be made if the district assembly has been convened for the third time to discuss the same subject, but a sufficient number of members are not present. At the second and third convocation, this provision must be expressly referred to.

Resolutions of the District Assembly are passed by an absolute majority of votes of those present. In the event of a tie, the motion is rejected.

Art. 19. The district president or his deputy shall attend the meetings of the county assembly and must be heard at any time at his request. The same applies to other officials of the district administration whom the district president or his deputy introduces to the assembly to assist them. The district administrator only has the right to vote if he is also an elected member of the district assembly.

From the district committee.

Art. 20. The District Committee shall consist of the District Administrator and four other members elected by the District Assembly from among its members. All members of the county assembly are eligible for election, including those who are members of the municipal council or municipal council in municipalities with fewer than 1500 inhabitants. Election is by an absolute majority of votes for six years; every three years half of the members retire and are replaced by a new election. Those who retire may be re-elected provided they are still members of the district assembly. Anyone who ceases to be a member of the district assembly must also resign from the committee.

Art. 21. Elections for regular additions to the District Committee shall take place every three years at the regular meeting of the District Assembly.

Extraordinary elections to replace members who have resigned within the election periods shall be arranged by the District Administrator. The retiring members of the district committee shall remain in office until the newly elected members take office.

Art. 22. The District Committee shall administer the affairs of the District Corporation, prepare and execute the resolutions of the District Assembly, appoint the Returning Officer and any other necessary officers of the District Corporation and direct and supervise its management, represent the District Corporation vis-à-vis third parties, and perform the other duties assigned to it by law.

The district committee gives its opinion on all matters submitted to it on the basis of the law or by the state government.

Art. 23. In urgent cases, the District Committee shall exercise the powers reserved to the District Assembly. In such cases, the approval of the County Assembly must be obtained subsequently. The committee is never authorized to approve taxes or changes to the budget.

Art. 24. Payment orders to the district budget funds shall be issued by the Chairman in accordance with the resolutions of the District Committee and in the name of the same. All copies issued by the District Committee shall be signed by the Chairman.

Art. 25. The district committee shall be responsible for all matters that were previously assigned to district committees, unless the district assembly elects special committees for these matters.

The laws determine the powers of the district committee with regard to the affairs of the municipalities in the district.

Art. 26. Before taking office, the members of the district committee shall be sworn in by the district administrator by a handshake on oath.

Art. 27. The district committee shall determine the time and number of its regular meetings. Extraordinary meetings shall be arranged by the district council as required; it shall be obliged to do so as often as two members request it.

Art. 28. The Committee shall regulate its business by rules of procedure which shall require the approval of the District Council.

Art. 29. The district president or his deputy shall chair the committee and shall have the casting vote in the event of a tie.

Art. 30. The presence of the Chairman (or his deputy) and two other members of the Committee is required for a resolution to be valid. Resolutions shall be passed by majority vote.

Art. 31. The district president is obliged to temporarily prohibit, ex officio or at the behest of the higher state authority, the execution of those resolutions of the district committee or the district assembly which exceed their powers, violate the law or the interests of the state. He must then immediately seek the decision of the president of the district government and at the same time inform the chairman of the district assembly. After consultation with the district council, the district president shall give his decision, stating the reasons.

## Title II - About the districts.

Art. 32. The districts (Regierungsbezirke) shall remain in their present boundaries. District boundaries may only be altered by law.

Art. 33. Each district shall have a district councillor charged with the administration of its affairs (Art. 2.).

The district council consists of the district president and four district deputies.

The latter shall be elected by the Provincial Assembly for a term of six years. The deputies of the counties of the district elect three candidates for each member of the district council by an absolute majority of votes, from which the provincial assembly also elects the respective member of the district council by an absolute majority of votes.

Half of the district deputies retire every three years. The deputies can be re-elected.

Anyone who has reached the age of 30, has belonged to the district for at least three years through property ownership or residence and pays at least 18 Rthlr. per year in class tax or 20 Rthlr. in property tax (excluding surcharges) or 24 Rthlr. in trade tax, or would have to pay according to his circumstances if one of these types of taxation existed, is eligible for election.

Art. 34. Elections for regular additions to the District Council shall be held every three years at the regular session of the Provincial Assembly.

Extraordinary elections to replace deputies who have resigned during the election period shall be arranged by the Chief President. The retiring deputies shall remain in office until the newly elected members of the district council take office.

Before taking office, the district deputies are sworn in by the President of the Government with a handshake.

Art. 35. The President of the Government shall convene the District Council as often as business requires. He shall be obliged to do so if two members so request.

The District President chairs the deliberations and has a casting vote in the event of a tie. In cases of disability, his place is taken by his legal deputy.

The President of the Government shall direct and distribute the business and shall ensure the implementation of the resolutions of the District Council. He shall suspend the execution of unlawful resolutions or

resolutions contrary to the general interest ex officio or at the behest of the higher state authority and obtain the decision of the Ministry of State.

Art. 36. The presence of the President of the Government or his deputy and two deputies is required for a resolution to be valid. Resolutions shall be passed by majority vote. Copies thereof shall be signed by the chairman.

The District Council shall regulate its course of business by means of rules of procedure, which require the approval of the Chief President.

Art. 37. The District Council shall give its opinion on the questions submitted to it by the President of the Government.

The President of the District Council may, as often as it appears to be in the public interest, invite members of the district government to attend meetings of the District Council and district deputies to attend meetings of the latter in order to make presentations and take part in the deliberations.

The powers of the district council in relation to the affairs of the municipalities shall be determined by law.

The District Council submits an annual report on the administration of district affairs. district affairs. This report is published.

### Title III - Of the provinces

Art. 38. The provinces shall continue to exist in their present extent as corporations and administrative districts. The boundaries may only be altered by law.

#### Provincial Assembly. (Provincial Parliament.)

Art. 39. The Provincial Assembly (Provincial Parliament) decides on provincial matters.

#### Election of the Provincial Assembly.

Art. 40. The deputies to the provincial assembly shall be elected by the district assemblies. Every municipal voter who has reached the age of 30 and has belonged to the district for which he is elected for at least three years by residence or property ownership is eligible for election.

Art. 41. One deputy shall be elected for each district. If the population of the district reaches 60,000 souls, two deputies shall be elected; for every additional 50,000 souls, one deputy shall be elected.

Art. 42. Provincial Deputies shall be elected for a term of 6 years. Each election shall cease to have effect when the conditions of eligibility cease to apply. Every three years, half of them shall retire and be replaced by new elections. Those retiring may be re-elected.

Art. 43. Elections to complete the Provincial Assembly shall be held every third year at the regular session of the District Assembly. Extraordinary elections to replace members who have retired during the term of office shall be arranged by the district council of the district whose assembly elected the retiring members. The replacement shall only take office for the period for which the retiring member was elected. 27s

Art. 44. The election protocols signed by the chairman and the secretary of the district assembly shall be submitted in writing to the chief president, who shall immediately announce the result of the election in the official gazette, simultaneously send an extract from the election protocol to each elected deputy and submit all election protocols to the provincial Diet for "examination" of their validity.

### Powers of the Provincial Assembly.

Art. 45. The Provincial Assembly shall bind all inhabitants of the Province by its resolutions passed in provincial matters. In particular, it has the right to decide on expenditures for provincial affairs as well as for common affairs of individual districts or several counties, as well as for the elimination of an emergency, and to distribute the same among the districts, counties or municipalities.

The Provincial Assembly shall distribute the taxes to be levied by province in the same manner, unless otherwise provided by law.

It shall give its opinion on the introduction, amendment or repeal of provincial provisions, as well as on other matters, if required by the State Government.

The laws determine the powers of the Provincial Assembly with regard to the affairs of the municipalities of the province.

Art. 46. Contributions in excess of three years or of more than 10 percent of direct state taxes, as well as otherwise distributed contributions, may only be imposed by law.

A law is also required for bonds, as well as for guarantees from Proving.

Art. 47. The Provincial Assembly shall adopt the accounts and the budget each year. A period of three years may be adopted by resolution of the Provincial Assembly for the preparation of the budget. The Provincial Assembly may entrust the approval of the accounts to a specially elected commission.

All income and expenditure of the province, including those services which the law declares to be a provincial responsibility, must be included in the budget.

Art. 48. In order to avert or alleviate an urgent emergency in the Province, the Provincial Assembly may, without further authorization, decide to levy a provincial tax of up to 2 percent of the direct state taxes, even if the total amount of provincial taxes exceeds 10 percent of the state taxes when this levy is added (Art. 46.). In no case may more than 2 percent in total be levied to avert the same state of emergency.

Deliberations and resolutions of the Provincial Assembly.

Art. 49. The sessions of the Provincial Assembly (Provinzial-Landtage) shall be opened and closed in the name of the King by the Chief President or his deputy.

Art. 50: The Deputies shall assemble annually in the month of April at the size of the Chief President for the ordinary session, unless the King summons them to another city of the Province.

In addition, the Provincial Assembly may be convened by the King at any time. The extraordinary meeting shall be announced in the Official Gazette, stating the reason for it and specifying its duration.

Meetings are convened by the Chief President by means of a written invitation.



Art. 51. The ordinary session of the Provincial Assembly may not last longer than fourteen days without the express consent of the Chief President, and not longer than four weeks without the permission of the King.

Art. 52. Under the chairmanship of the oldest deputy, who is assisted by the two youngest deputies as secretary and scrutineer, the Provincial Assembly shall elect its chairman, a deputy and two secretaries for a term of one year at the regular session (Art. 50.).

The Assembly regulates its course of business by means of rules of procedure.

Art. 53. A report on the administration of provincial affairs shall be submitted to the Provincial Assembly annually by the Chief President at the regular session. In this report, the most important results of the administration, in so far as they are to be presented in figures, shall be substantiated by statistical evidence.

This report will be published.

Art. 54. The meetings of the Provincial Assembly shall be public. The public may be excluded for certain matters by a resolution to be adopted in a secret session of the Assembly.

Art. 55. The Provincial Assembly can only pass resolutions if more than half of its members are present.

The resolutions of the Provincial Assembly are passed by an absolute majority of votes of those present.

Art. 56. The members of the Provincial Assembly who do not reside at the place of assembly shall receive a daily allowance of two thalers, and a mileage allowance of 15 centimes for both the outward and return journeys.

Art. 57. The Chief President and the commissioners appointed to represent or assist him shall attend the meetings of the Provincial Assembly and shall be heard at any time on request.

Art. 58. The Chief President shall prepare and execute the resolutions of the Provincial Assembly and administer the Provincial Institutes. For this purpose he may give orders to the district councils and district committees, and may also convene the former for joint consultation. However, the

Provincial Assembly is entitled to elect special commissions or appoint its own officials to deal with individual matters or to administer individual institutions.

Art. 59. The Chief President shall temporarily suspend the execution of those resolutions of the Provincial Assembly and the commissions appointed by it which exceed their powers or violate the law or the interests of the state, either ex officio or at the behest of the higher state authority.

He shall then immediately submit the objectionable decision to the Ministry of State to obtain the King's decision and at the same time inform the Chairman of the Provincial Assembly or the Commission thereof.

#### Title IV - General provisions.

Art. 60. The expenses of the county and provincial assemblies, as well as of the county committees, commissions and district councils, shall be borne by the counties, districts and provinces concerned. Whether and what allowances are to be granted to the members of the committees, district councils and commissions and to the special provincial officials (Art. 58.) shall be determined by the provincial assembly by general resolutions.

Art. 61. The revenue and expenditure budgets of the districts and provinces shall be published in the district and official gazettes after they have been adopted by the district and provincial assemblies.

For a period of one month, counting from the finalization of the invoices, the last ones are disclosed in the district council office or in the secretariat of the President for public inspection.

Art. 62. Any person who, without valid excuse, refuses to accept a position to which he has been elected in accordance with the provisions of this law, or to continue to hold the position he has not yet held for three years, may be deprived by resolution of the electoral assembly of the rights conferred on municipal electors by this law for a period of three to six years.

The electoral assembly shall decide which excuses are to be considered valid. With regard to the members of the committees, district councils and commissions, the provisions of §. 137. of the municipal code apply in this respect.

Art. 63. The members of the county and provincial assemblies, as well as of the committees and district councils, are not bound by instructions or orders of the electors.

Art. 64. If a member of a district council or a district committee accepts a salaried state office, or enters an office in the state service with which a higher rank or a higher salary is connected, he shall lose his seat and vote in the district council or in the district committee and can only regain his position by a new election.

Art. 65. The King may dissolve a county assembly as well as a provincial assembly. A new election must then be ordered within two months.

If a district assembly is dissolved, the district committee shall also be considered dissolved (Art. 20.). However, the members of the committee shall continue to perform their functions until a new election has been held.

Art. 66. All laws concerning the district and provincial estates are repealed, as well as all those provisions concerning the provincial administration which are not in accordance with the present law. However, the previous administrations of the county, district and provincial institutes shall remain in force until the Provincial Assembly has decided otherwise.

### Title V. - Transitional provisions.

Art. 67 The temporary provisions necessary for the execution of this Act shall be made by the Minister of the Interior. In particular, he shall designate the authorities which shall temporarily perform the functions of the new bodies to be established for the execution of this Act.

Art. 68: Any other regulation of the district boundaries in the Province of Poznan required as a result of the demarcation line shall be carried out by the State Government.

The arbitrators to be elected in accordance with §§. 2. and 32 of the ordinance of June 30, 1834. from the district deputies appointed by the district councils shall be elected by the parties from the competent district residents until further notice, if they do not agree on other persons.

The election is subject to examination and confirmation by the settlement authority, which must also appoint the chairman if the parties fail to unite.

Art. 69 The existing communal institutions shall remain in force as long as they are not otherwise regulated by special statutory provisions.

Until then, the members of the local and regional parliaments and the commissions elected by them must continue to perform their functions. Substitute elections may also be held.

Art. 70 As long as the revision of the tax legislation has not yet been completed, the principles according to which the distribution of the district and provincial taxes to be levied under Art. 11, 12, 46 and 48 shall be determined by a regulation of the State Government to be issued after consultation with the provincial representatives.

Art. 71 The members of the county and provincial assemblies, as well as of the county committees and district councils, who retire for the first time, shall be determined by lot. The same shall apply to the resignation of the second third of the members of the district assembly elected for the first time (Art. 7.).

Art. 72 Pending the adoption of definitive rules of procedure, the provincial and district assemblies, the district committees and district councils shall comply with provisional rules of procedure to be issued by the Minister of the Interior.

Art. 73. The order as to when and in what manner the provisions of the District, District and Provincial Regulations shall be carried out in relation to the District and Provincial Representation to be formed thereafter in the Province of Posen shall be made by a special law after the relations of this Province have been definitely settled with regard to the demarcation line.

The provisional provisions and orders required until then shall be issued by the Minister of the Interior in accordance with Article 67.

Authenticated under Our Supreme Signature and the Royal Seal.

Given Charlottenburg, March 11, 1850.

(L. S.) Friedrich Wilhelm.

Gr. v. Brandenburg. v. Ladenberg. v. Manteuffel. v. d. Heydt.

v. Rabe. Simons. v. Schleinitz. v. Stockhausen.

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### **34. Act on Police Administration. From March 11, 1850.**

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree, with the consent of both Houses, as follows:

§. 1. The local police administration shall be administered by the officials appointed for this purpose in accordance with the provisions of the municipal ordinance (mayors, district officers, chief magistrates) in the name of the King, subject to the exception provided for in §. 2. of the present Act.

Local police officers are obliged to carry out the instructions issued to them by the superior state authority in police matters.

Anyone staying or residing in their administrative district must comply with their police orders.

§. 2. In municipalities where there is a district government, a regional, municipal or district court, as well as in fortresses and in municipalities with more than 10,000 inhabitants, the local police administration may be transferred to special state officials by decision of the Minister of the Interior. The same institution may also be temporarily introduced in other municipalities for urgent reasons.

§. 3. The costs of the local police administration shall be borne by the municipalities, with the exception of the salaries of the special civil servants employed by the State Government in the event of the application of §. 2.

§. 4. The district government may issue special regulations concerning the facilities required by the local police administration. The existing legal provisions for the district of the Court of Appeal in Cologne regarding the appointment of police commissioners shall not be affected by this. Likewise, the district commissariats in the Province of Posen shall remain in effect for the time being.

The appointment of all police officers whose employment is the responsibility of the municipal authorities requires the confirmation of the state government.

§. 5. The authorities responsible for local police administration are authorized, after consultation with the municipal council, to issue local police regulations valid for the area of the municipality and to impose fines of up to 3 Rthlrn for non-compliance.

The threat of punishment can go up to the amount of 10 Rthlrn. if the district government has given its approval.

The district governments shall issue the necessary provisions on the manner of promulgating local police regulations and on the forms on the observance of which their validity depends.

§. 6. The objects of the local police regulations include:

- a) the shooting of persons and property;
- b) Order, safety and ease of traffic on public roads, paths and squares, bridges, banks and bodies of water;
- c) market trading and the public offering for sale of foodstuffs;
- d) Order and legality in the public gathering of a large number of people;
- e) the public interest with regard to the reception and accommodation of foreigners; wine, beer and coffee taverns and other establishments serving food and drink;
- f) Care for life and health;
- g) Protection against the risk of fire during construction work, as well as against acts, undertakings and events in general that are harmful to the public and dangerous to the public;
- h) shooting of fields, meadows, pastures, forests, tree plantations, vineyards, etc;

i) everything else that must be organized by the police in the special interest of the municipalities and their members.

§. 7. The consent of the municipal council shall be required for ordinances on agricultural police matters. Consultation shall take place under the chairmanship of the official responsible for local police administration.

§. 8. A copy of every local police ordinance must be submitted immediately to the state authority that initially has jurisdiction.

§. 9. The President of the Government is authorized to repeal any local police regulation by a formal decision stating the reasons.

With the exception of urgent cases, the decision must be preceded by a consultation with the district council. The declaration of the latter is decisive

1) if a local police regulation is to be repealed because it violates the welfare of the municipality;

2) if it is a matter of repealing an ordinance on objects of the agricultural police because of its inappropriateness.

§. 10. The provisions of §§. 8. and 9 shall also apply to the amendment or repeal of local police regulations.

§. 11. The district governments are authorized to issue police regulations applicable to several municipalities in their administrative district or to the entire area thereof and to impose fines of up to 10 Rthlrn for non-compliance.

The Minister of the Interior shall issue the necessary provisions on the manner of promulgating such regulations and on the forms on the observance of which their validity depends.

§. 12. The regulations of the district governments (Section 11) may relate to the matters listed in Section 6 of this Act and all other matters whose police regulation is required by the circumstances of the municipalities or the district.

§. 13. The consent of the district council shall be required for the enactment of such regulations of the district governments which concern the agricultural police.

§. 14. The authority of the district governments to issue other general prohibitions and penal provisions with higher authorization in the absence of an existing statutory prohibition is repealed.

§. 15. No provisions may be included in the police regulations. (§§. 5. and 11.) may not include any provisions that conflict with the laws or regulations of a higher authority.

§. 16. The Minister of the Interior shall be authorized, insofar as this is not contrary to the law, to override any police regulation by means of a formal decision.

The approval of the King is required for this if the police regulation was issued by the King or with his approval.

§. 17. The police judges shall rule on all violations of police regulations (Sections 5 and 11), taking into consideration not the necessity or expediency, but only the legal validity of those regulations in accordance with the provisions of Sections 5, 11 and 15 of this Act.

§. 18. In the event of the accused's incapacity, a proportional prison sentence shall be imposed. The maximum sentence is 4 days instead of 3 Rthlr. and 14 days instead of 10 Rthlr.

§. 19. The police regulations issued to date shall remain in force until they are repealed in accordance with this Act.

§. 20. The power of execution to which the police authorities are entitled under the previous laws shall not be affected by the above provisions.

Every police authority is entitled to enforce its police orders by applying the statutory means of coercion.

Whoever fails to do what he has been ordered to do by the police authority in the exercise of this power must expect that it will be carried out at his expense -- subject to any penalty imposed and the obligation to pay damages.

§. 21. All provisions contrary to this Act are repealed. Duly signed under Our Supreme Signature and the Royal Seal.



Given Charlottenburg, March 11, 1850.

(L.S.) Friedrich Wilhelm.

Gr. Brandenburg. v. Ladenberg. v. Manteuffel. v. d. Heydt.  
v. Rabe. Simons. 16th Schleinitz. v. Stockhausen.

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**35. Act concerning the fine to be imposed instead of the  
confiscation of property against deserters and resigned  
conscripts. From March 11, 1850.**

We Frederick William, by the Grace of God, King of Prussia etc. etc.  
decree, with the consent of both Houses, as follows:

§. 1. A fine of fifty to one thousand thalers shall be imposed on deserters who cannot be apprehended, as well as on those persons who leave the Prussian army in order to evade their duty to enter the service of the standing army, instead of confiscation of property.

The assets of the aforementioned persons shall be seized by the judge to the extent that, in the judge's discretion, they are required to cover the maximum penalty of one thousand thalers that may be imposed on them and the costs of the proceedings.

The provisions on the procedure remain unchanged.

§. 2. Our Ministers of War and Justice are charged with the execution of this decree.

The present law replaces the ordinance of January 4, 1849 (Collection of Laws page 47.), the provisions of which shall remain in force until the present law becomes binding.

Authenticated under Our Royal Signature and Royal Seal.

Given Charlottenburg, March 11, 1850.

(L. S.) Friedrich Wilhelm.

Gr. v. Brandenburg. v. Ladenberg. v. Manteuffel. v. Heydt.  
v. Rabe. Simons. v. Schleinitz. v. Stockhausen

### **36. Ordinance on the Prevention of Abuse of the Right of Assembly and Association that Endangers Legal Freedom and Order. From March 11, 1850.**

According to the previous legislation, the right of association in Prussia was very strictly limited, so that no club or association was allowed to come into existence without police permission. By the law of April 6, 1848., the right of association was suddenly granted without any restriction. However, as there were fears for the political security of the state from the clubs and associations that were created as a result, the decree of June 29, 1849, substantially restricted the right of association, which was extended even further by this decree.

We Frederick William, by the Grace of God, King of Prussia etc. etc. decree the following for the entire extent of the monarchy, with the consent of both chambers:

§. 1. The entrepreneur must notify the local police authority of all meetings in which public matters are to be discussed or deliberated at least four and twenty hours before the start of the meeting, stating the place and time of the meeting. This authority must issue a certificate immediately.

If the meeting does not begin at the latest one hour after the time stated in the notice, the meeting that begins later shall not be deemed to have been duly notified. The same applies if a meeting resumes proceedings that have been suspended for more than one hour.

§. 2. The heads of associations whose purpose is to influence public affairs are obliged to submit the statutes of the association and the list of members to the local police authority for information within three days of the foundation of the association, and any changes to the statutes or the members of the association within three days of their occurrence, and to provide the local police authority with any information relating thereto on request.

The local police authority shall immediately issue a certificate of the submission of the statutes and the lists, or amendments thereto. The provisions of this and the preceding paragraph do not apply to ecclesiastical

and religious associations and their meetings if these associations have corporate rights.

§. 3. If the time and place of the meetings of an association whose purpose is to influence public affairs are fixed in advance by statute or by a special resolution, and this has been brought to the attention of the local police authority at least four and twenty hours before the first meeting, a special notification as required by §. 1. is not required for the individual meetings.

§. 4. The local police authority shall be authorized to send one or two police officers or one or two other persons as deputies to any meeting at which public matters are to be discussed or deliberated.

If they are police officers, deputies may only appear in their official uniforms or with an explicit indication of their official capacity. If they are not police officers, they must be recognizable by special insignia.

Members must be given a reasonable amount of time to speak and, if requested by the chairperson, must be provided with information about the speakers.

§. 5. The deputies of the police authority are authorized, subject to the criminal proceedings to be initiated by law against the persons involved, to immediately dissolve any assembly in respect of which the certificate of the report made (§§. 1. and 3.) cannot be presented. The same shall apply if motions or proposals are discussed in the assembly which contain an incitement or incentive to commit criminal acts; or if armed persons appear in the assembly who, contrary to the request of the deputy of the authorities, are not removed.

§. 6. As soon as a deputy of the police authority has declared the meeting dissolved, all those present are obliged to leave immediately. If necessary, this declaration may be carried out by the armed force.

§. 7. No one may appear armed at an assembly, with the exception of police officers on duty.

§. 8. For associations whose purpose is to discuss political issues in meetings, the following restrictions apply in addition to the above provisions:

- a) they may not admit women, pupils and apprentices as members;

b) they may not enter into contact with other associations of the same type for common purposes, in particular not through committees, boards, central bodies or similar institutions or through mutual correspondence.

If these restrictions are exceeded, the local police authority is entitled, subject to the criminal proceedings to be initiated by law against the parties involved, to close the association until a court decision is made (§. 16.).

Women, pupils and apprentices may not attend the assemblies and meetings of such political associations. If they are not removed at the request of the attending deputy of the authorities, there is reason to dissolve the assembly or meeting.

§. 9. Public gatherings in the open air require the prior written approval of the local police authority.

Permission must be requested by the entrepreneur, manager, steward or leader of the same at least eight and forty hours before the meeting and may only be refused if the holding of the meeting is likely to endanger public safety or order.

If the assembly is to take place in public places, in towns and villages, or on public roads, the local police authority must also take into account all traffic considerations when issuing the permit. Otherwise, the provisions of §§. 1. 4. 5. 6. and 7. shall apply to such assemblies.

§. 10. Public processions in cities and towns or on public roads shall be deemed equivalent to the assemblies mentioned in the preceding paragraphs. When obtaining permission, the intended route must be indicated. Ordinary funerals, as well as processions of wedding assemblies, where these are brought here, ecclesiastical processions, pilgrimages and supplications, if they take place in the traditional manner, do not require prior permission or even notification. §. 11. Within two miles of the place of the King's residence at any given time, or of the place of the seat of both chambers, open-air popular assemblies may not be permitted by the local police authorities. The latter prohibition exists only for the duration of the session of the Houses.

§. 12. If a meeting has taken place without the notification prescribed in §. I., the organizer shall be liable to a fine of five to fifty thalers or to imprisonment for eight days to six weeks. The person who provided the

place for the meeting and anyone who acted as chairman, steward, leader or speaker at the meeting shall be liable to a fine of five to fifty thalers.

§. 13. If, contrary to the provision of §. 2, the statutes of an association or the list of members, or the changes that have occurred have not been brought to the attention of the local police authority within the specified period, or if information required by the local police authority has not been provided, each head of the association shall be punished with a fine of five to fifty thalers, unless he can prove that the notification or the submission of the list was omitted entirely through no fault of his own. This penalty shall be supplemented by a prison sentence of eight days to six weeks if the directors have knowingly submitted incorrect statutes or lists or knowingly provided incorrect information.

§. 14. If, contrary to the provision of §. 4, the deputies of the local police authority have been denied access to a meeting or the granting of an appropriate place, the entrepreneur and anyone who has acted as chairman, steward or leader in the meeting shall be fined from ten to one hundred thalers or imprisoned from fourteen days to six months. The same penalty shall be forfeited by the chairman if he refuses to provide the members of the police authority with information about the identity of the speakers or if he knowingly provides incorrect information.

§. 15. Anyone who does not leave immediately after the deputy of the local police authority has declared the meeting dissolved (§§. 5., 6.-8.) shall be punished with a fine of five to fifty thalers or with imprisonment of eight days to three months.

§. 16. If a political association exceeds the restrictions set out in §. 8. a. and b., then leaders, stewards and directors who have acted contrary to these provisions shall forfeit a fine of five to fifty thalers or imprisonment of eight days to three months. The judge may also decide to close the association depending on the severity of the circumstances. This closure must be imposed if the chairman, steward or leader has repeatedly committed an offense.

Anyone who further participates as a member in a political association that has been closed even temporarily (§. 8.) shall be fined from five to fifty thalers or imprisoned from eight days to three months.

Anyone who allows himself to be admitted as a member contrary to the provision of §. 8. be liable to a fine of five to fifty thalers.

If the police authority has provisionally closed a political association (§. 8.), it is required to notify the public prosecutor's office within eight and forty hours of the closure and of the unlawful acts that gave rise to the closure. If the public prosecutor's office does not find the alleged unlawful acts to be suitable grounds for an indictment, the local police authority shall cancel the closure of the association upon notification by the public prosecutor's office within a further eight days. Otherwise, the public prosecutor's office must either bring charges within eight days or request a preliminary investigation within the same period. The court must then immediately decide whether the provisional closure of the association should continue until the main proceedings are concluded.

§. 17. Anyone who participates in a parade or an open-air meeting for which the permission required by the present law has not been granted shall be punished with a fine of one to five thalers.

Whoever incites or causes to be incited to such an assembly or to such a performance before the receipt of the permission of the authorities, or is active therein as an organizer, leader or speaker, shall be punished with a fine of five to fifty thalers or with imprisonment from eight days to three months.

These penalties are forfeited at any time if the assembly or procession took place in cities and towns or on public streets, or if a popular assembly took place in the cases of §. 11. In all other cases, the participants and even those who have acted as speakers are only liable to prosecution if the refusal of permission or the subsequent prohibition was previously made public or specifically announced to the participants. If the non-approval or the prohibition is announced during the meeting or during the procession itself, no one can excuse himself on the grounds of his subsequent participation by claiming ignorance of the non-approval or the prohibition.

§. 18. Anyone who appears armed at an assembly in violation of the prohibition in Section 7 shall be punished with imprisonment of fourteen days to six months.

§. 19. Whoever incites to appear in an assembly with weapons, or has the incitement to do so disseminated, or distributes weapons in an assembly, shall be punished with imprisonment from six weeks to one year.

§. 20. The acts punishable by this Ordinance shall be excluded from the jurisdiction of the jury courts, notwithstanding the jurisdiction of the jury

courts with regard to political offenses committed in assemblies, even if they are committed by the Bresse.

§. 21. The above provisions shall not apply to meetings ordered by law or by the statutory authorities and to meetings of the members of both Houses during the duration of the session.

Electoral associations are not subject to the restrictions of §. 8.

§. 22. Violation of the provision of article 38 of the constitutional document of January 31, 1850, which reads as follows:

"The armed forces may not deliberate either on or off duty, or assemble otherwise than by order. Assemblies and associations of the armed forces for the purpose of discussing military arrangements, orders and directives are forbidden even if they have not been convened."

shall be punished in accordance with the provisions of §. 125. of the first part of the Military Penal Code.

§. 23. Present law replaces the ordinance of June 29, 1849. (Collection of Laws §. 221-225.)

Authenticated under Our Supreme Signature and the Royal Seal.

Given Charlottenburg, March 11, 1850.

(L. S.) Friedrich Wilhelm.

Gr. v. Brandenburg. v. Ladenberg. v. Manteuffel. v. d. Heydt.

v. Rabe. Simons. v. Schleinitz. v. Stockhausen.

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